Pace Motor Lines, Inc. *and* Local Union No. 191, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* John Dilella *and* Frank Zamfino *and* Daniel Streit. Cases 2-CA-16104, 2-CA-16124, 2-CA-16134, 2-CA-16253, 2-RC-18202, 2-CA-16159, 2-CA-16405, and 2-CA-16539

March 31, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On November 13, 1980, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, except as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Pace Motor Lines, Inc., Stratford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. In paragraphs 2(a) and (b), after the words "to their former jobs, or," insert the phrase "if those jobs no longer exist."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] Respondent asserts that the Administrative Law Judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because the Administrative Law Judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *N.L.R.B.* v. *Pittsburgh Steamship Company*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We find no basis for reversing his findings.

[2] The Board has repeatedly held that, to constitute a valid offer of reinstatement which would toll backpay, the communication must be specific, unequivocal, and unconditional. *Jimmy Dean Meat Company, Inc. of Texas*, 227 NLRB 1012, 1034 (1977); *Standard Aggregate Corp.*, 213 NLRB 154 (1974); *Controlled Alloy, Inc. and Harlin Precision Sheet Metal Fabrication Co., Inc.*, 208 NLRB 882, 883 (1974); *The Masonic and Eastern Star Home of the District of Columbia*, 206 NLRB 789, 791 (1973). The Administrative Law Judge found with respect to employee Birdsall that Respondent's official, William Pacelli, asked if Birdsall was working and stated that he had some work available. In the context of other invalid offers of reinstatement, we find that Pacelli's communication was not sufficiently specific, unequivocal, and unconditional so as to constitute a valid offer. The Administrative Law Judge found with respect to employee Streit that Respondent sent a telegram to him stating that there was "a possibility" there may be a job, giving him only 2 days to respond. We do not find such an offer sufficiently unequivocal and unconditional.

Although the Administrative Law Judge appropriately relied, in part, on *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975), to find that Zamfino's discharge violated the Act, we note that the record evidence demonstrates that Zamfino was engaged in actual concerted activity, that Respondent had knowledge of such activity, and that Respondent violated the Act by discharging him because of such activity. As noted by the Administrative Law Judge, the record reflects that complaints about unsafe equipment were a dominant part of the ongoing organizational campaign as evidenced by the December 19, 1978, meeting between Respondent's representative, Patrick Pacelli, and several employees, at which the employees made complaints about unsafe equipment and Pacelli promised to remedy them. Moreover, in March 1979, Zamfino, himself, was involved in an accident as a result of unsafe equipment—a fact of which Respondent was undoubtedly aware. Moreover, when Zamfino told his fellow employees that he had been discharged because of his refusal to operate unsafe vehicles, the employees commenced a strike to protest Respondent's action. Thus, under these circumstances, Zamfino's April 3 protest was merely a further manifestation of the employees' continuing protests about unsafe equipment, and, although different in form from prior and subsequent employee actions, it nonetheless constituted group action. Respondent was well aware when it discharged Zamfino for such protest that unsafe equipment was a group complaint and part of the impetus for unionization. We thus find that Respondent was chargeable with knowledge of the concerted nature of Zamfino's conduct. We therefore agree with the Administrative Law Judge's finding that Zamfino was discharged because of his protected concerted activities. *Carbet Corporation*, 191 NLRB 892 (1971), enfd. 80 LRRM 3054, 68 LC ¶12,845 (6th Cir. 1972); *Hugh H. Wilson Corporation*, 171 NLRB 1040 (1968), enfd. 414 F.2d 1345 (3d Cir. 1969); *Guernsey-Muskingham Electric Cooperative, Inc.*, 124 NLRB 618 (1959). Additionally, we find *Ontario Knife Company* v. *N.L.R.B.*, 637 F.2d 840 (2d Cir. 1980), to be inapposite. There, the court found that the employee was discharged because she walked off her job, not as part of a group protest against working conditions, but as part of an individual protest against her supervisor's use of vulgar language. Here, Zamfino's action was clearly part of the group protest against unsafe equipment.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT coercively interrogate our employees about their union activities.

WE WILL NOT threaten our employees with loss of employment or any other reprisals if they engage in union activities.

WE WILL NOT promise our employees wage increases and other improvements in their terms and conditions of employment in order to discourage their union activities.

WE WILL NOT instigate or solicit employees to sign a petition to revoke their designations of Local Union No. 191, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, as their bargaining agent.

WE WILL NOT engage in surveillance or create the impression of engaging in surveillance of employees' union activities.

WE WILL NOT inflict property damage or personal injury on union representatives.

WE WILL NOT discharge employees because they have engaged in protected activities for the purpose of mutual aid and protection, or discourage membership in said Union, or any other labor organization, by discriminatorily reducing the hours of work of employees; assigning employees less desirable work; discriminatorily discharging employees; and discriminatorily requiring employees to remove CB equipment from their vehicles.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer the following employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any losses sustained as a result of our discriminatory and unlawful action, with interest:

Gerald Marron	Streit
William Marron	Tyler
DiLella	Rynich
Zamfino	P. Birdsall
Canganelly	A. Smith
Knapp	DeSanto
Majowski	Harvey
Fulton	Glinsky
Verdi	

WE WILL rescind and revoke our rule requiring drivers to remove from their vehicles all CB equipment.

PACE MOTOR LINES, INC.

DECISION

FRANK H. ITKIN, Administrative Law Judge: Unfair labor practice charges were filed against Respondent in the above cases on December 26, 1978, and on January 8, 15, and 22, and March 1, April 24, and June 22, 1979. Unfair labor practice complaints and amendments thereto were issued on February 12, April 5, May 22, July 3, and September 11, 1979. The complaints were also amended at the hearing. In addition, the Board's Regional Director conducted a representation election in a unit of Respondent's employees on August 16, 1979. Various ballots were challenged and objections to the election were filed. On November 8, 1979, the Regional Director ordered that a hearing be held on both the challenged ballots and objections and, further, that the above unfair labor practice cases be consolidated with the representation proceeding.

Briefly, the General Counsel alleges in the unfair labor practice cases that Respondent, in resisting the Charging Party Union's organizational effort, violated Section 8(a)(1) and (3) of the National Labor Relations Act by, *inter alia*, coercively interrogating and threatening employees; offering and promising employees wage increases and other improvements in terms and conditions of employment; soliciting employees to sign a petition to revoke their designations of the Union as their bargaining agent; engaging in and creating the impression of engaging in surveillance of employee union activities; inflicting bodily injury upon a union representative and an employee; causing property damage to an employee's vehicle; discharging employee Frank Zamfino; transferring to less desirable work and later discharging employees Gerald and William Marron; providing employee John DiLella with reduced hours of work and later discharging him; imposing more onerous working conditions upon employees; discharging employees who were engaged in an unfair labor practice strike; and failing and refusing to reinstate striking employees upon their unconditional applications to return to work. Respondent Employer denies that it has violated the Act as alleged.

Upon the entire record in this consolidated proceeding, including my observation of the witnesses, and after due consideration of the briefs of all counsel, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICE PROCEEDING

Respondent maintains offices and terminal facilities in Stratford, Connecticut, where it is engaged as a motor carrier in the interstate and intrastate transportation of freight and other goods. The Company is admittedly an employer engaged in commerce as alleged. Local Union No. 191 is admittedly a labor organization as alleged. Commencing during late 1978, the Company's employees initiated a campaign to obtain union representation. On December 19, 1978, Local Union No. 191 filed a representation petition with the Regional Director. Thereafter, on June 25, 1979, following a 30-day strike, the Company and Local Union No. 191 entered into a Stipulation for Certification Upon a Consent Election for a unit of

employees, *including* "all full-time and regular part-time truckdrivers, truckdrivers/dispatchers, platform men, yardmen, maintenance men, and mechanics" employed by the Company at 1425 Honeyspot Road Extension in Stratford, and *excluding* "all other employees, including dispatchers, sales employees, office clerical employees, professionals, guards and supervisors." The Regional Director approved the stipulation on June 27, 1979, and an election by secret ballot was conducted on August 16, 1979. There were approximately 65 eligible voters. Five ballots were cast for Local Union No. 191; 23 ballots were cast against the participating labor organization; and there were 47 challenged ballots. On August 23, 1979, Local Union No. 191 filed timely objections to the election.

The evidence pertaining to the Union's organizational drive and management's opposition to this campaign is summarized below.

A. Employee DiLella Seeks Organizational Assistance; the Employees' Christmas Party; DiLella Encounters Difficulty in Obtaining Work From the Company and Is Laid Off

John DiLella testified that he started working for the Company as a truckdriver during October 1977; that, during November 1978, he spoke to Local Union No. 191's business agent, Anthony Rossetti, "about organizing Pace Motor Lines"; and that Rossetti thereafter mailed to him blank union "authorization cards." DiLella further testified that subsequently, on Saturday December 16, 1978, he attended a Christmas party for the employees of Pace Motor Lines. This party had been arranged by coworkers Gerald and William Marron and was held at the Bridgeport American Legion Hall. Rossetti also attended the party.

During the party, as DiLella testified:

> [W]e had all the employees in the hallway [and] I started discussing about organizing. . . . I began passing out the cards and everybody started signing them.

See General Counsel's Exhibits 3(a), (b), (c), and (d) (union authorization cards signed by employees William Marron, Daniel Streit, James Canganelly, and John DiLella). DiLella recalled that he passed out some 25 authorization cards at the party. And, "at the end of the meeting in the hall," DiLella "took all the cards and . . . gave them to Tony Rossetti."

DiLella next recalled that on Monday, December 18, 1978, he drove his automobile to the Company's Stratford terminal and parked it in the "employees' parking lot"; that he "locked" his vehicle; that subsequently, upon completing his work that day, he asked Company Representative Robert Pacelli "for a starting time" for the following day and Pacelli responded; "[C]all back in the morning"; and that when he then returned to his vehicle in the parking lot he discovered that "it was unlocked" and "a manilla envelope" containing blank union authorization cards was missing. On the next morning, Tuesday, December 19, DiLella telephoned Company Dispatcher Anthony DeSanto for a "starting time." He was told "to call back later because it was slow." During the prior 3-to-4 month period, DiLella had worked "every day." After December 19, however, he only worked some 3 days in December; some 13 days in January; and no days in February. DiLella explained how he repeatedly "called in" for starting times and was repeatedly told that none were available.

On or about February 9, 1979, DiLella asked Company Representative Robert Pacelli "about a pink slip" so that he could "collect unemployment benefits." Pacelli, in turn, asked DiLella to return his Connecticut Turnpike charge card or toll plate. Pacelli also instructed DiLella that he had to "wait" for the "pink slip." Later that evening, when DiLella again "called in," he was again apprised by Company Dispatcher Jack Smith that there was still no work available and Smith also told him:

> [Y]ou [DiLella] don't have to bother calling back . . . . They got you marked down as laid off . . . .[1]

Anthony DeSanto testified that he first started working for Respondent as a driver in 1975 and that he was later made driver-dispatcher during the summer of 1978.[2] On the morning of Monday December 18, 1978, DeSanto "walked into the office and [Company Representative] Patrick Pacelli was going over a sheet of paper with all the drivers names on it . . . ." According to DeSanto, Patrick Pacelli:

> . . . said they had a party and everybody voted to go Union, and I'm just trying to figure out who went to the party and who voted Union, and who I think didn't vote Union.

DeSanto further testified that about 10 a.m. on or about December 18 or 19, 1978, he "observed [Company Representative] William Pacelli force entry into John DiLella's car" in the terminal parking lot. DeSanto explained:

> From where I was sitting, I could see him [William Pacelli] bend over in the car like he was looking under the seats, and he came walking back into the office about 10 minutes later and he was carrying an envelope. . . . He showed the envelope to [Company Representative] Patrick [Pacelli]. It was addressed to John DiLella's father. They took the en-

[1] The Company sent DiLella a mailgram, dated May 24, 1979, following the strike (discussed *infra*), notifying him that "Pace has work available in your job classification . . . ." See G.C. Exh. 8.

[2] DeSanto's driver-dispatcher duties included "making sure" that the employees drive their "assigned trucks" with the "proper loads"; that the "necessary paper work" was done; and that "empty trucks" stop "to pick up freight." DeSanto also answered the telephones in the terminal. DeSanto noted that drivers "would call in" during the day "if they had any problems" and speak with him. He would also receive calls from customers. On cross-examination, DeSanto explained that he would drive only one or two loads daily to nearby local areas "and he spent the rest of the time in the office dispatching"; he would spend, at most, "an hour a day driving"; he would assign local orders to himself for delivery if there were no drivers available; and he "would help with the assigning of drivers" in general.

velope and went down in the downstairs office with it. It was full of Union cards, unsigned Union cards.

DeSanto saw "a photostat" of the envelope some 5 days later, with the writing: "Pat, this is your rat."

DeSanto further testified that prior to December 18, 1978, DiLella "worked every day." After December 18, DiLella "worked one day and they would lay him off for a week, and he would work one or two days and they would lay him off again." There was, as DeSanto noted, "work available for" DiLella; however, DeSanto was instructed by Company Officials William, Patrick, and Robert Pacelli "not to" dispatch DiLella. In addition, DeSanto recalled that on or about December 18 or 19 "there was a notice on the board that said no more CB radios in the trucks." DeSanto was unaware of any prior company rules pertaining to the use by drivers of CB radios.[3]

B. *Management Meets With the Employees; the Employees Sign a Petition To Revoke Their Union Designations*

Driver-dispatcher DeSanto testified that during the evening of December 19, 1978, Patrick Pacelli "instructed" him "to stick around" because Patrick Pacelli "was going to have a meeting with some of the drivers."[4] The meeting was held that evening in the terminal conference room. Present were Company Representatives Patrick, William, and Robert Pacelli and some 12 drivers. DeSanto recalled that Patrick Pacelli stated to the drivers:

> This is a non-union Company. It has always been a non-union Company. It will remain a non-union Company as long as we own it. He considered it like his house. Nobody was going to fuck up his house. He'd die at the fence first.

DeSanto also recalled that Patrick Pacelli had "instructed" DeSanto "to tell the drivers that [management] could give them higher wages, better vacations, [and] better medical plans . . . . [Patrick Pacelli] couldn't speak about [these subjects] because he would be in violation of the National Labor Relations Law . . . ." Further, DeSanto testified that William Pacelli discussed at this meeting "trimming down the operation, parking the straight-jobs, cancellation of the meat operation, the refrigerated operation, and trimming it down to 10 or 12 trucks, and the rest of the guys wouldn't work."[5] And members of management at this meeting "brought out all the records of the drivers that had worked there as far as overages, shortages and damages . . . . They brought the files up and they said if you worked for a Union . . . you wouldn't be working there. We tolerate these records. We're trying to help you stick with us. . . ."

On or about the following day, December 20, DeSanto observed driver James Canganelly speaking with Patrick Pacelli in the dispatch room. According to DeSanto:

> James [Canganelly] asked Patrick [Pacelli], when I walked into the conversation, if we do sign this petition and I get all the drivers to sign it, what would this do for the guys, and Patrick said, it's going to save everybody's job, and there wouldn't be any hard feelings towards the drivers and that everyone would be working again. He said it would just save everybody's job and save a lot of hassle and the Union wouldn't be able to bother us.

Thereafter, on or about December 21, DeSanto observed driver Canganelly show Patrick Pacelli at the dispatch window three copies of a typewritten petition. The petition (G.C. Exh. 11) states:

> We the employees of Pace Motor Lines, of our own free will, are asking to withdraw our applications for Union admittance, which we signed on December 16, 1978, at an employees Christmas party. The reason for this action is that we feel we were under the influence of alcohol which would have affected our judgment at that time.

There were some four signatures on this petition at the time, including the signature of Canganelly. This document now purportedly contains some 18 employee signatures.

James Canganelly testified that he was employed by the Company from July 1976 to May 1979 as a tractor-trailer driver; that he signed a union authorization card at the December 16 Christmas party; and that earlier, about Thanksgiving, he had the following conversation in the dispatch area with Company Representative Patrick Pacelli:

> He [Patrick Pacelli] came up to me and said he had heard the Marrons were going to have this Christmas party and they were going to pass out Union cards at that time . . . . I told him I didn't know anything about anybody passing out Union cards at this party. . . . He came back and said if in fact we did sign Union cards they would reduce the force in the shop, cut down the drivers, and he said to me, no matter whatever happened Pace would never become Union, because he considered it like his house, and he said nobody was going to fuck up his house. He'd die on the fence first.

Canganelly later attended the December 16 party where he signed a union card. (See G.C. Exh. 3(c).) He denied that he drank any alcohol at this party because he has "traces of sugar in [his] blood." Subsequently, on Monday, December 18, he was questioned at work by Patrick Pacelli, as follows:

> [Patrick Pacelli] wanted to know if I in fact had signed a card and I said yes. . . . He asked me if I knew what I had done and I told him I read it and

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[3] DeSanto overheard Torino Pacelli, father of Company Officials Patrick, Robert, and William Pacelli, telling Patrick Pacelli in the terminal dispatch room that the drivers "shouldn't have the CB radios in the trucks because other drivers would harass them on the road and tell them to go Union."

[4] As noted *supra*, a representation petition was filed with the Regional Director on December 19, 1978.

[5] A "straight-job" is a small six-wheel truck as distinguished from a larger "tractor-trailer" which consists of two units.

> I knew I would get some bargaining power with the Union. . . .

A few days later, as Canganelly further testified, Patrick Pacelli approached Canganelly at work and stated: ". . . if we continued on the course we were going, that [he] would cut the routes down, eliminate the Massachusetts run . . . and all the refer work [refrigerated service] that we were doing."

Canganelly recalled that on the following day Patrick Pacelli again approached him at work. Canganelly testified:

> He [Patrick Pacelli] handed me a piece of paper, small notebook paper, and it had a format that I was going to have typed up, and have it circulated. He said what I should put on it. . . . I took the piece of paper . . . home and had my wife type it.

General Counsel's Exhibit 11 is the petition typed by Canganelly's wife from this "small piece of notebook paper." Canganelly caused this petition to be circulated among the drivers. Canganelly told his coworkers, when he solicited their signatures on this petition:

> . . . are you interested in signing this to withdraw our Union cards to save the jobs of the guys that are going down the road.

Patrick Pacelli later telephoned Canganelly's wife and asked her "to please have the thing [the petition with signatures] brought over because they had to mail it."[6]

Driver Thomas Elcyzk also attended the December 19 meeting at the Employer's terminal. Elcyzk recalled that Patrick Pacelli "wanted to know our bitch; he wanted to know better ways we could straighten out the place without a Union and work things out; better benefits . . . . " The drivers, in response to Pacelli's questions, indicated that they wanted "better equipment, less hours . . . more money." Elcyzk, at this meeting, complained to management about having to drive from Boston "with no lights on [his] truck." William Pacelli responded: "[I]t would be straightened out"—"we wouldn't have to go through that no more." Patrick Pacelli also stated: "[W]e want to try to work it out without the Union . . . we would get profit sharing . . . better equipment; more money; better insurance with dental . . . and stuff like that." Patrick Pacelli warned that "if the Union did come in . . . he would close the doors . . . he was going to get rid of all of the 102 [straight-job] drivers . . . ."[7]

Driver Elcyzk also attended an office Christmas party which was sponsored by the Employer. This party was on or about December 22, 1978. Elcyzk observed coworker Canganelly passing around his "petition" at this party (G.C. Exh. 11). Elcyzk noted: "All the Pacelli brothers were there." And, as Elcyzk further recalled:

> [Patrick Pacelli] called me [and dispatcher DeSanto] into a storage room . . . and showed me a photostatic copy of an envelope with Johnny DiLella's name on it . . . and a circle with a line pointing to Johnny's name. It says, "Here's your rat . . . ." Pat told me he got it from somebody in the Union.

Patrick Pacelli, at the time, asked Elcyzk: "I thought you didn't know who . . . was passing out the Union cards . . . ." Elcyzk claimed: "I didn't know."[8]

C. *The Marron Brothers Participate in the Organizational Drive; They Are Assigned Different Routes and Later Asked To Surrender Their Toll Plates*

William Marron testified that he was employed by the Company as a driver from November 1974 until December 1978; that he organized the 1978 Christmas party for the Company's employees with the assistance of his brother Gerald Marron and coworkers John DiLella, Thomas Elcyzk, and Robert Fulton; and that at the party on December 16 DiLella solicited drivers to sign union authorization cards. William Marron signed a union card that evening. William Marron explained that, in the past, his "usual assignment" from the Company was "around the Boston, Massachusetts, area"—he would go to Boston "95 to 98 percent of the time." However, on Monday, December 18, 1978, the Company assigned William Marron "to go to . . . Connecticut, and then they dispatched [him] to the New York-New Jersey area." Further, according to William Marron, prior to Monday, December 18, the Company had no rules pertaining to the use of CB radios. However, as William Marron explained:

> When I came to work on Monday the 18th, there was a sign in the window . . . saying that all radios and radio equipment would be removed from the trucks effective immediately.

Later on that same day, Monday, December 18, William Marron decided to "book off" or "take time off." William Marron returned to the terminal and apprised Company Night Foreman Jack Smith that he "was going to book off." Subsequently, on Friday, December 22, William Marron and his brother Gerald Marron again

[6] Driver Frank Zamfino signed a union authorization card at the December 16 Christmas party. Zamfino was present at the meeting in the terminal during the evening of December 19. Zamfino recalled that Patrick Pacelli stated to the drivers: ". . . this is not a Union shop . . . if you want a Union shop go work someplace else"; "he said he was making up extra loads to keep the straight-job drivers working"; and he referred to "lost and damaged freight."

[7] Driver Paul Birdsall attended this meeting. He recalled that Patrick Pacelli also stated:

> They wanted to offer us more money. They wanted to offer us profit sharing. They couldn't do nothing at the moment because of the Union. They had to wait until that was over. . . . They'd never be a Union barn, they would close the doors and start over again on Central Ave. if they had to.

[8] Driver Neil Stroomer testified that on or about December 20, 1978, William Pacelli approached him at work and "asked how the [employee] Christmas party was . . ." and "if anybody signed a Union authorization card." Stroomer admitted to Pacelli that he had signed a card. Pacelli replied:

> . . . they would never have a Union in this place . . . he would close the doors and lay everybody off before a Union got in there. . . . He also said, if you wanted a Union job, you should go across the street to the McOueen's to get a Union job.

went to the terminal "to book on" and get their "checks." There, they asked Company Representative William Pacelli for "our checks" for the previous workweek. Pacelli, in turn, asked the two employees for their charge or toll plates. The Marron brothers returned their toll plates. Gerald Marron was also given his personal property—i.e., "a box of CB equipment and gloves and cleaning fluid that were in the truck at the time." William Marron explained that, in the past, drivers were asked to return their charge cards or toll plates "only when they were leaving or when the Company discharged them."

Gerald Marron corroborated his brother's testimony, as summarized above. Gerald Marron also recalled that prior to the Christmas party, during early December 1978, he had discussed the party with Company Representative Patrick Pacelli and Patrick Pacelli's father, Torino Pacelli, at the terminal. Gerald Marron testified that Patrick Pacelli then "told me that he had heard a rumor going on that union cards were going to be passed out at the Christmas party." Gerald Marron "denied" any knowledge of this rumor. Gerald Marron further recalled that, in the past, his "usual assignment" from the Employer was in Massachusetts and Rhode Island. However, "during the week preceding the Christmas party," he was assigned to New York and New Jersey. In addition, Gerald Marron was also present with his brother on Friday, December 22, when "William Pacelli asked for our toll plates." About 1 week later, during late December, Gerald Marron "called in" and had the following conversation with William Pacelli:

> I [Marron] started to explain to him [Pacelli] about what me and my brother had to do with the Union cards, that we had nothing to do with it as far as passing them out, or getting, or anything else, and I did call to try to get my job back, but he answered, "What's done is done and I guess we have to live with it," and then he hung up on me.

D. *The Mace Incident*

Union Shop Steward Ralph Manente testified that during the early morning of January 10, 1979, he "was handing out literature to the Pace drivers . . . about a quarter of a mile from the entrance to Pace Motor Lines . . ."; that Union Representatives Joe Roberto and Tony Rossetti were also present; that two trucks then left the Pace terminal followed by a Jaguar automobile; and that William Pacelli was driving the Jaguar. Manente recalled:

> [A]bout the same time, Tony Rossetti crossed over the street, and stood to my right, and exchanged pleasantries with Mr. [William] Pacelli . . . . [Rossetti] said "good morning" and [Pacelli] said "what's so fucking good about it . . . ." About this time, I [Manente] noticed a small can with a red dot with a spray nozzle, and I felt some wetness on my face, and I tried to tell Tony that he [Pacelli] had mace; I was sprayed in the face . . . .

William Pacelli, seated in the driver's seat of the Jaguar, was "holding the can." Both Rossetti and Manente were sprayed with this chemical.

Driver-dispatcher DeSanto testified that he was a passenger in the Pacelli automobile at the time of the above incident. He recalled:

> We were coming down the street and when we got by where the people from the Union were standing, Billy Pacelli pulled up and rolled down his window. Tony Rossetti walked over to talk, and he was a few feet from the car, and he said, "Good morning." Patrick answered, "what's so fucking good about it." I remember Anthony Rossetti saying, "It's as good as you want it to be." The car started to move. William Pacelli and his brother Bobby Pacelli started squirting mace out of the window . . . and I seen Anthony Rossetti and Ralph Manente grab their eyes and fall down . . . .

E. *Management Terminates Employee Zamfino; the Employees Decide To Strike*

James Canganelly testified that on or about April 7, 1979, he signed a "second" union authorization card. (See G.G. Exh. 14.) Coworker Frank Zamfino had solicited his signature. According to Canganelly, Zamfino, when he solicited Canganelly's signature:

> . . . asked me [Canganelly] if I wanted to sign another Union card because he just had some problems, and he had been fired from Pace. He didn't want to drive some pieces of equipment that he deemed unsafe . . . . He said . . . it's about time we got some protection, institute some safety methods there. We're having a lot of problems with unsafe vehicles. I signed the card because it was true.

Subsequently, as Canganelly further testified, about 1 day before the commencement of the strike at the Employer's terminal, Zamfino telephoned Canganelly and stated:

> Everyone was going to meet at the Honeyspot Diner at 4 o'clock in the morning. We were all going to go to Pace, all the drivers that signed the second set of Union cards; we were going to set up an effective picket line and picket and go on strike.

Canganelly met with the other drivers at the Honeyspot Diner "and went down and set up our picket line." The strike, as discussed below, started on or about April 27, 1979, and lasted about 1 month.

Alfred Smith testified that he worked for the Company as a straight-truck driver from October 1976 until April 27, 1979; that he signed a union authorization card on or about April 25, 1979; and that coworker Elcyzk had solicited his signature in the parking lot at the Employer's terminal. Smith explained:

> We were inside the terminal when he [Elcyzk] asked me to talk to him. We went out to my car in

> the employees' parking area and he asked me to sign the card, that he thought about going on strike, so I signed the card and participated in a strike.

(See G.C. Exh. 16.) While the two drivers were "talking," Patrick Pacelli "drove his car over . . ." and stated: "[W]hy don't you go home."

Later, as Smith further recalled, coworker Zamfino telephoned him stating that "there would probably be a strike that following morning." Smith informed Zamfino that he "would participate in that strike." On the morning of the strike, Patrick Pacelli telephoned Smith and had the following conversation:

> He [Patrick Pacelli] told me [Smith], they went and did it, and I said who did what. He said they are outside the terminal picketing . . . . He said I know you can come in. If you come in and a number of other guys come in, we can break this thing. He said I also want you to know that if all these guys don't come in, they're fired.

Smith joined the strike that morning. He related to his coworkers that Patrick Pacelli had "called" him earlier that morning.[9]

Driver Frank Zamfino testified that, during mid-March 1979, he had been involved in an accident while driving a company vehicle and the cause of this accident was, in his view, the faulty brakes on his vehicle. Later, on or about April 3, 1979, Company Dispatcher Robert Shine assigned Zamfino "tractor 132." Zamfino discovered that after he "started it up . . . smoke filled the cab and there was no safety equipment." Zamfino informed Shine that the "truck was unsafe." Shine then assigned Zamfino "tractor 116." Zamfino, after inspecting this vehicle, discovered that "the seat was too low" and it could not be adjusted. Also, there was a 90-degree play in the steering wheel before the front wheels would turn. Zamfino again notified Shine that this equipment was "unsafe." Shine replied: "I don't have anything else for you to drive." Zamfino turned in his assignment and went home. Zamfino subsequently telephoned William Shine for a "starting time." William Shine apprised Zamfino: ". . . you're all done" and then "hung up." See General Counsel's Exhibit 24, a letter from Patrick Pacelli to Zamfino, dated April 3, 1979, stating, *inter alia*, "[T]his is the last time we will tolerate your childish attitude. As far as I am concerned you quit your job and you no longer work at Pace . . . ."

Zamfino further testified that, after the above incident, he spoke with Union Representative Rossetti. Rossetti gave Zamfino blank union authorization cards. Zamfino signed a card on April 5, 1979. Zamfino also solicited the signatures of his coworkers. Zamfino later returned the signed cards to Rossetti on or about April 26. Zamfino then apprised Rossetti: ". . . all the drivers wanted to have a strike." Rossetti, in turn, instructed Zamfino to "contact all the drivers and have them meet at the Honeyspot Diner . . ." the following morning. Zamfino recalled that "[i]t wasn't really a meeting. Everybody met and went down to Pace and set up our picket lines."[10]

F. *The Strike*

The record shows that on or about April 27, 1979, some 18 employees of Respondent commenced a strike against the Employer which lasted approximately 1 month.[11] At the inception of the strike, Dispatcher DeSanto, as he testified, was instructed by William and Patrick Pacelli:

> to tell our customers that we're having temporary labor problems, and we hope to have them settled within a few days, and we'll be back to work again to pick up their freight.

Some 4 days later, DeSanto was instructed by Robert Pacelli "to tell the customers if the shipment was 10,000 pounds or better . . . he would pick it up." There was no restriction set as to any geographical area. Subsequently, some 10 days after the strike had started, DeSanto was instructed by William and Patrick Pacelli "to tell the customers we're giving up our Massachusetts and

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[9] Smith acknowledged receiving during the strike the following letter from Patrick Pacelli, dated May 11, 1979 (Resp. Exh. 2):

> We have recently been informed that the Union and/or individual employees are claiming that Pace employees who are on strike have been fired because of their support of the Union. This claim is completely false. You are still a Pace employee.
>
> We have maintained and continue to maintain that our employees have a legal right to come to work and a legal right to strike. The choice is up to the individual employee.
>
> If any of you feel that someone from the Company had made any statement to that effect, please be advised that we totally disavow any such statement. We have work available for you and again ask all employees on strike to return to work.

Also see G.C. Exh. 18.

Driver Carmine Verdi also testified that coworker Smith, when he arrived at the picket line at the inception of the strike, "told us he got a phone call from Pat Pacelli saying that if we don't report to work we're all terminated."

[10] Driver Daniel Streit testified that he signed a union authorization card on April 7, 1979, at the request of coworker Zamfino. Zamfino stated to Streit at the time "that he was going to organize the Union so that he could get his job back." Streit joined the strike.

[11] The General Counsel, in Appendix A to his amended consolidated complaint, lists 20 striking employees (including dispatcher-driver DeSanto, who later joined the strike), as follows:

1. P. Birdsall	11. Streit
2. Canganelly	12. Tyler
3. DeSanto	13. Verdi
4. Fulton	14. Yarmosh
5. Glinsky	15. Zientek
6. Knapp	16. Majowski
7. Harvey	17. G. Marron
8. Moreo	18. W. Marron
9. Rynich	19. Elcyzk
10. A. Smith	20. Semion

The General Counsel, in listing the striking employees in his post-hearing brief, also includes the names of employees Toppe, Torres, Stroomer, and G. Birdsall. The General Counsel later notes that on June 13, 1979, these four employees were discharged for strike misconduct. They are not included in Appendix A of the complaint or named as discriminatees. Further, the General Counsel cites in his brief the testimony of William Pacelli to the effect that employees Zientek, Moreo, and Semion "quit during the strike." And, I note that employees Gerald and William Marron, Zamfino, and DiLella were terminated before the strike commenced.

Rhode Island operation, and we're not handling refrigerated merchandise any more"—"we won't be handling refrigerated products any longer." DeSanto apprised customers of this, as instructed.

There were, according to DeSanto, pickets present in front of the terminal 24 hours each day during the strike. DeSanto observed the following incident on or about May 8, 1979:

> I remember Bobby Pacelli . . . was going out with a load and we were standing in the window watching. He came down the driveway and there was a man standing on the corner, later identified as Maglione . . . . Bobby Pacelli went down the right-of-way, made the right turn onto Honeyspot Road, and then I saw the man, Maglione, flying out from behind the truck laying on the ground. Approximately an hour later, Bobby Pacelli came back, laying on the floor of his father's car. [Robert Pacelli] said, "Hey, I really made that bastard jump when I rounded the corner, didn't I."[12]

DeSanto joined the strike about 5 days later on May 13, 1979.

Bernard Boden is employed by Midtown Packing Company, Inc. Midtown is engaged in the wholesale meat business. Boden recalled that "for many years" Respondent "carried [Midtown's] merchandise." Respondent transported Midtown's product about five times a week and Boden was pleased with Respondent's service. According to Boden, Patrick Pacelli "or his brother" telephoned him during the strike and "said he [Pacelli] is no longer picking up freight because he had labor problems." Boden has never been contacted by Pacelli to resume the performance of their services.

G. *The Strike Ends; Employees Apply for Reinstatement*

The strike ended about May 24, 1979. Driver Canganelly recalled that at the end of the strike, when "we broke down the picket line," he was instructed by Union Business Agent Rossetti to "call Pace and make ourselves available for work"; that he in fact made such a call to William Pacelli "when the strike ended" and "told him I was available for work"; and that William Pacelli replied: "he would get back to me but right now things were a little bit slow because of the strike." See General Counsel's Exhibit 15, a mailgram from the Employer to Canganelly, dated May 26, 1979. Canganelly noted that he received later communications from the Employer concerning work. Canganelly—in response to communications from the Employer concerning his availability—would notify the Employer that he was available; however, nothing "happened."[13]

DeSanto, as noted *supra*, joined the strike on or about May 13, 1979. DeSanto testified that on or about May 26, 1979, shortly after the strike ended, he sent a mailgram (G.C. Exh. 12) to the Company notifying it that he would be "available for work as soon as released from doctor's care . . . ." DeSanto explained that he had been injured on the picket line by a vehicle driven by the wife of a nonstriking employee. (There is no claim made here that Respondent is responsible for this injury or conduct.) Some 10 days after sending the mailgram, DeSanto also telephoned the terminal and asked William Shine, the dispatcher, "to give" Patrick or William Pacelli "a message that [DeSanto] was available for work."

Stephen Knapp, a driver for Respondent who participated in the strike, also telephoned William Pacelli when "the strike was over" and stated that he "wanted to come back to work." William Pacelli said that there is "no work available at the time." (See G.C. Exh. 19.) Knapp later received a mailgram from William Pacelli, dated August 28, 1979 (G.C. Exh. 21), indicating "there is a possibility there may be a job available." Knapp telephoned William Pacelli as instructed. Knapp testified:

> He [William Pacelli] said that there was a possibility of a job but he wasn't sure. Everything was sort of mixed up at the time. He said it might have been night work at the same rate of pay.

Knapp had been working "days" before the strike. Shortly thereafter, Knapp received another mailgram from William Pacelli, dated August 31, stating:

> This will acknowledge our request to you to return to work which we have available at the same salary and benefits as before, however, you have refused our offer to return to work.

Mark Majowski testified that he started working for the Company as a driver on or about January 2, 1979. Majowski became 21 years of age on November 28, 1979. Majowski, when he first applied for work, apprised management of his correct age. Majowski later joined the strike. When the strike ended, Majowski telephoned Dispatcher Tony Gore to notify the Employer that he was available for work. Gore said that "there's not that much work available . . . if there is, we'll call." Majowski later spoke with Wiilliam Pacelli and "he said basically the same thing." (Also see G.C. Exh. 28.) About 1 month later, Majowski visited the terminal, asked for an unemployment "pink slip," and was told that there was "still no work." Thereafter, by letter dated August 16, 1979 (G.C. Exh. 29), William Pacelli requested Majowski to return his toll plate.

Driver Carmine Verdi joined the strike. When the strike ended, Verdi "called in for work" speaking to Dispatcher William Shine. Shine apprised Verdi, "[W]e

[12] Joseph Maglione, a picket, was not an employee of the Company. There were, however, employees present at the picket line during this incident. Maglione, as he testified, was injured and hospitalized as a result of being struck by the Pacelli truck.

And, as picket Joseph Bennetta testified, Robert Pacelli later backed a tractor-trailer some 15 feet into Bennetta's automobile while Bennetta was waiting for a traffic light signal to change near the terminal. Pacelli claimed that he "didn't know [he] had the thing in reverse." Pacelli also remarked to Bennetta: "It sure was a nice car."

[13] Canganelly noted that he telephoned William Pacelli in response to one such mailgram and stated that he "was available for work." Pacelli "said it was a night position." Canganelly had been working "days" before the strike. Cf. Resp. Exhs. 17 and 18.

don't have nothing right now, but we'll give you a call." (Also see G.C. Exh. 32.) Thereafter, by mailgram dated August 22, 1979 (G.C. Exh. 33) William Pacelli notified Verdi:

> There is a possibility there may be a job available with the Company. Please advise if you are interested in working for the Company by Friday August 24, 1979, at 9 a.m. direct to William Pacelli.

Verdi later notified Pacelli by telegram that he "needed sufficient time for the recall" because he had "another job" and wanted to give some notice to the employer involved. Thereafter, Verdi's wife received a telephone call from Respondent to the effect that, "if he [Verdi] didn't report Monday . . . at 5 o'clock at night, [he] was terminated." The call was made on Monday and Verdi was "still working at that other job." Subsequently, by mailgram dated August 31, 1979 (Resp. Exh. 6), Verdi was notified by William Pacelli: "By not showing up at the designated assignment time or calling in, we are taking you off our preferential recall list."[14]

Driver Paul Birdsall joined the strike. In late May, when the strike ended, he "asked for [his] job back" and William Pacelli advised him that there was no work available at the time. See William Pacelli's mailgram to Birdsall, dated May 26, 1979 (G.C. Exh. 39), wherein Pacelli acknowledged Birdsall's "verbal request" and stated that there is no work available "at this time." However, William Pacelli, when he testified before the Connecticut unemployment agency (See G.C. Exhs. 40 and 43), asserted that there "was work available" for Birdsall at the end of the strike.[15] As a result of William Pacelli's testimony, the unemployment agency hearing officer found:

> [T]he Employer notified the claimant by mail to return to work on May 25, 1979, June 6, 1979, and June 27, 1979, and the claimant never responded to any of the correspondence.
>
> The Employer had work available to the claimant immediately after the labor dispute settled . . . .

William Pacelli, when confronted with this earlier contradictory testimony, claimed: "I got my days mixed up."[16]

H. *Management Denies That It Engaged in the Coercive and Discriminatory Conduct as Alleged; the Testimony of William, Patrick, and Robert Pacelli*

William Pacelli, vice president of Respondent and in charge of its "overall operations," denied, *inter alia*, that he entered driver DiLella's vehicle and removed an envelope containing union authorization cards; that he had "any knowledge whatsoever of any Union activity" on December 18, 19, or 20, 1978; that the "word Union [was] ever mentioned" during a meeting with the drivers on the evening of December 19 at the terminal or that any threats or promises of benefits were uttered at this meeting; and that he otherwise coercively interrogated or threatened employees as alleged. William Pacelli claimed that he had posted a notice forbidding the use of CB radios during the first week of December 1978; he was, however, unable to locate a copy of this notice. He further claimed that drivers had been warned earlier "not to divulge any Company information on the air . . ."; that the drivers persisted in this conduct thereby exposing the Employer to excessive "weight fines" by state police; and that he therefore required the removal of all CB radios.

William Pacelli further testified that he attended the Employer's Christmas party on December 22. He denied witnessing driver Canganelly circulating a "petition" at this party. He also claimed that on this same day the Marron brothers quit and voluntarily surrendered to him their toll plates. He denied that he had any knowledge of union activities on their behalf. He admitted shooting mace at Union Representatives Rossetti and Manente on January 10, 1979. He claimed that he was being threatened at the time and that Rossetti, while making alleged threats and vulgar statements, "pulled out" a revolver and "had it fully extended" toward the three Pacelli brothers and DeSanto, who were then seated in his Jaguar vehicle. He admittedly did not call the police following this incident.

William Pacelli denied giving Dispatcher DeSanto any instructions concerning customer pickups after the strike started. He denied instructing DeSanto to limit pickups to a certain poundage or later telling DeSanto that the Employer was "going to give up" certain refrigerated and nonrefrigerated work. He claimed that "we had always considered going back . . . we just assumed it was a temporary labor problem . . . ." He claimed that, after the 30-day strike ceased, he attempted to resume his refrigerated operations without success. He also claimed that the refrigerated vehicles or equipment required "extensive maintenance" because there had been "vandal-

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[14] Driver Robert Fulton joined the strike. At the end of the strike, he too asked to be reinstated and was told that "there was no work available." See G.C. Exh. 34. A few weeks later, Fulton spoke with William Pacelli and was again told that "there was no work available." And, 2 weeks later, William Pacelli again apprised Fulton that "there was no work available." Also see G.C. Exh. 36, the Company's notification to striking employee Ronald Tyler on May 26, 1979, that there was "no work available."

Driver Jerry Rynich joined the strike. At the end of the strike, he too asked for reinstatement and was told that nothing was available. See G.C. Exh. 37. Later, by mailgram dated August 28, 1979, Rynich was advised that "there is a possibility there may be a job available . . . ." See G.C. Exh. 38. He contacted the Employer and was informed that the "job" was not "full-time." He apprised the Employer that he "was interested in returning to work only on a full-time basis."

[15] Birdsall was not present at the unemployment agency hearing.

[16] Paul Birdsall testified that during August, some 3 months after the strike ended, William Pacelli asked "if I [Birdsall] was working." Birdsall said, "Yes." Pacelli replied that "he had some work available . . . ." Birdsall responded: "I was already working." See G.C. Exh. 39.

In addition, driver Streit testified that he too informed management that he was "available for work" during late May and was told that "there was nothing available at this time . . . ." See G.C. Exh. 31. Also see Resp. Exh. 4, a telegram to Streit dated August 28 concerning "a possibility there may be a job." Streit denied receiving this telegram. And, driver Al Smith testified that he too applied for work at the end of the strike and was told that none was available. See G.C. Exh. 17.

The General Counsel, in his post-hearing brief, states that employee Elcyzk "quit" Pace's employment shortly after the strike ended; employee Yarmosh was not reinstated and he quit about mid-June; and, as noted *supra*, drivers Stroomer, Toppe, Torres, and Gary Birdsall were discharged in June for strike misconduct. See Resp. Exhs. 22 and 23.

ism" during the strike. William Pacelli was shown a list of some 100 meat customers of Pace Motor Lines (G.C. Exh. 44). He was asked "what individual called you or what individual you called . . . who told you they would not use your trucking anymore because . . . they are using other trucks . . . ." He responded, "I couldn't give that. I can't remember all that information." He later named a meat company who assertedly gave their business "to another trucker."

In addition, William Pacelli claimed that after the strike ended, during early September 1979, he offered driver Canganelly over the telephone a "full-time job" and instructed him "to call . . . at 2 o'clock in the afternoon for a starting time." Pacelli claimed that Canganelly "never called . . . back." (See Resp. Exhs. 15, 16, 17, and 18.) William Pacelli claimed that driver Knapp telephoned Pacelli during late August and, after being offered "a full-time job," said he was "not interested in returning." (See G.C. Exhs. 21 and 22.) William Pacelli claimed that driver Rynich was offered "a full-time job" during a telephone conversation in late August and Rynich said "he had no intention of returning." William Pacelli claimed that he sent a telegram to driver Streit "telling him of a job available" during late August and never heard from Streit. (See G.C. Exh. 31 and Resp. Exhs. 4 and 5.) (I note, as discussed above, that Resp. Exh. 4 only refers to "a possibility there may be a job available.") William Pacelli claimed that he telephoned driver Verdi's wife during August and "told her . . . that I have a job available" and Verdi never telephoned him. (See G.C. Exhs. 32, 33, and 35 and Resp. Exh. 6.) (I note again that G.C. Exh. 33 only refers to "a possibility of a job being available.") William Pacelli claimed that driver Majowski was under 21 years of age while working for Respondent and, consequently, after the strike, in compliance with the pertinent Federal regulations, Pacelli told Majowski "that he wasn't 21 and we weren't allowed under DOT regulations to work him." Pacelli placed this conversation in June 1979. (See Resp. Exh. 24.) And, William Pacelli's testimony concerning driver Paul Birdsall and his related testimony before the Connecticut unemployment agency is summarized *supra*. (See G.C. Exh. 43.)

Elsewhere, William Pacelli testified that on or about April 27, when the month-long strike started, and again on or about May 4, he personally requested some 11 or 12 striking employees to return to work. Also see Respondent's Exhibit 2, a letter from Patrick Pacelli to the strikers, dated May 11, reciting: ". . . we have work available for you and again ask all employees on strike to return to work."

Patrick Pacelli, president of Respondent, denied the coercive and discriminatory conduct attributed to him. Patrick Pacelli denied, *inter alia*, any conversation with Canganelly during Thanksgiving week in 1978 or that he ever threatened Gerald Marron; that he was "aware" of any union activities of either Gerald or William Marron during December 1978; that his brother William broke into DiLella's vehicle and he later saw an envelope containing blank union cards; that he was aware of any union activity at the terminal on December 18 or 19; and that the Union was mentioned at his meeting with the drivers on the evening of December 19. Patrick Pacelli generally denied that he "ever" spoke to Canganelly in December 1978 "concerning his Union activities." Elsewhere, Patrick Pacelli testified to the following conversation with Canganelly on December 21:

> [H]e [Canganelly] told me that he and some of the drivers had signed cards at the Christmas party . . . that they thought they had made a mistake . . . that [he wanted] to draw up a petition . . . to get our cards back . . . .

Patrick Pacelli assertedly responded, "[T]hat's your problem; I don't want nothing to do with it."

Patrick Pacelli recalled the January 10 mace incident, as follows:

> Well, we stopped the car and they [the union people] proceeded over to the car. And he [Rossetti] said, I got you this time . . . . Mother fuck you. Your mother—he proceeded to pull out his gun, pointed it. And then we just, Billy sprayed him with the mace and we took off. And that was it. . . .

Patrick Pacelli also claimed that the Marron brothers quit on December 22 and denied that he had any knowledge of their union activities. He also denied talking to employee Elcyzk in the storage room on that day or later talking to driver Al Smith at the inception of the strike. He further claimed that the incident involving driver Zamfino, as related above, in fact occurred on April 3, not April 2, and that the Employer's letter to Zamfino (G.C. Exh. 24) *mistakenly* refers to April 2 and is *mistakenly* dated April 4.

Patrick Pacelli also claimed that "our straight-job units were vandalized" during the strike; it would cost "in excess of $100,000 or whatever to have these vehicles fixed"; and "we didn't feel that . . . we could make it . . . ." Elsewhere, Patrick Pacelli recalled that on April 27, when the strike started, and again on May 4, he "asked" some 12 to 14 striking employees "to come back to work." And, later, on May 11, Patrick Pacelli wrote the strikers (Resp. Exh. 2): ". . . we have work available for you and again ask all employees to return to work . . . ."

Robert Pacelli, secretary-treasurer of Respondent, also denied the coercive and discriminatory conduct attributed to him. Robert Pacelli denied, *inter alia*, any knowledge of union activities on December 18 through 20, 1978. Robert Pacelli claimed that management conducted a meeting with its drivers on the evening of December 19 at the request of employee Paul Courchene and "nothing" was mentioned "about any Union activity that was taking place." Robert Pacelli acknowledged that the subjects discussed at this meeting included "more money"; "improve the medical insurance"; "more vacations"; and "overages, shortages and damages." Robert Pacelli claimed that no threats or promises of benefit were made to the employees at this meeting.

Further, Robert Pacelli claimed that employee DiLella's "hours were cut back" commencing during late De-

cember "because we didn't have a great volume of freight coming in at that time" and DiLella "was the last man of hire on the straight-jobs." Robert Pacelli claimed that thereafter, on February 9, DiLella requested "a layoff slip" because he could not "survive on this kind of pay. . . ." Robert Pacelli then requested DiLella to surrender his toll plate. In addition, Robert Pacelli claimed that Gerald Marron informed him during early December that both Gerald and William Marron would be terminating their employment at the end of December to open up a "truck stop"; that Pacelli therefore started breaking in new drivers on their runs; and that the Marrons in fact quit on December 22, 1978. Robert Pacelli denied any knowledge of their union activities prior to December 22, 1978.

Robert Pacelli was a passenger in William Pacelli's car on January 10 when William Pacelli shot mace at Union Representatives Rossetti and Manente. Robert Pacelli claimed that Rossetti, and his group, cursed and threatened the Pacellis, kicked their car, extended his hand with a revolver pointed at William Pacelli, and then William Pacelli "squirted him with the mace and we just—then we left." Robert Pacelli next denied hitting any pickets with a truck during the strike. Robert Pacelli claimed that a vehicle, which later did have an accident with a truck driven by him, ran into the rear of his truck while stopped at a traffic light. Robert Pacelli also claimed that driver Zamfino "was supposed to come in and see me" and "he never did." Zamfino assertedly "had a problem . . ."; "we wanted to bring him into the office to speak to him to see if we could straighten it out"; "he never called me and he never called in that night."[17]

I have quoted and summarized in sections A through G above the testimony of Anthony DeSanto, John DiLella, James Canganelly, Frank Zamfino, Thomas Elcyzk, Paul Birdsall, Neil Stroomer, William and Gerald Marron, Ralph Manente, Alfred Smith, Carmine Verdi, Daniel Streit, Joseph Maglione, Joseph Bennetta, Stephen Knapp, Mark Majowski, Robert Fulton, and Jerry Rynich. The testimony of these 19 witnesses clearly establishes Respondent's widespread pattern of threats, coercion, interference, and discrimination in an attempt to defeat the employees' organizational effort. The testimony of these 19 witnesses, as detailed above, is in significant part mutually corroborative of management's widespread pattern of coercive opposition to the employees' attempt to obtain union representation. Further, the testimony of these 19 witnesses withstood the test of thorough cross-examination. And, relying also upon demeanor, I am persuaded here that this testimony, as quoted above, is complete, reliable, and trustworthy.[18]

On the other hand, I find the conclusionary and often summary denials by William, Patrick, and Robert Pacelli of unlawful conduct attributed to them, as summarized in section H above, to be incredible and unreliable. Their testimony was at times vague, evasive, incomplete, and contradictory. An example of the unreliability of the testimony of the Pacellis is found in the testimony of William Pacelli. He, in my view, gave untrue testimony before the Connecticut unemployment agency in an effort to defeat employee Birdsall's claim. When confronted with this conflict at this hearing, he attempted to brush it aside as a mistake of dates. The testimony of Patrick and Robert Pacelli contain similar and related inconsistencies and infirmities.

In sum, as discussed below, I find and conclude here that Respondent, by William, Patrick, and Robert Pacelli, threatened, coerced, restrained, and discriminated against its employees as alleged. Their acts of misconduct included coercive interrogations, threats, promises of benefits, surveillance, impression of surveillance, bodily injury and property damage, solicitation of employees to disavow the Union, and the discharge of union supporters and, later, unfair labor practice strikers.[19]

[17] Robert Shine testified that he was a passenger in the truck driven by Robert Pacelli during the strike when it was assertedly struck in the rear by a passenger car. Robert Shine claimed that "we were just about to [come] to a complete stop when we got hit in the back . . . ." Robert Shine also denied that there was "any" conversation between William Pacelli and driver Stroomer on December 20 because Stroomer had "left" the terminal earlier that day. Elsewhere in his testimony, Robert Shine became uncertain and vague about the sequence of events on December 20.

Robert Shine also testified that he gave Zamfino his "paperwork" and assignment on April 3 and "about 5 minutes later he [Zamfino] pulled the truck up front, came in, dropped his paperwork down and said, 'that truck smokes. I'm going home' . . . ." Nothing else was said. And, William Shine claimed that he later told Zamfino on April 3 to "call Bobby in the morning."

Paul Courchene testified that the December 19 meeting was called at his behest and "the word Union never came up in the meeting." He denied hearing any promises of benefit or threats. He also claimed that coworker Canganelly's wife prepared the "petition" and there was no "small piece of paper . . . in Mr. Canganelly's possession." He acknowledged that—although the "petition" refers to the employees being "under the influence of alcohol"—in fact "nobody was really under the influence or intoxicated at the time we signed . . . ."

Michael Brooks, warehouse manager for William B. Meyers, operators of a warehouse and distribution center, testified that before the strike Respondent was a prime carrier for Meyers; that Respondent no longer does any work for Meyers; that the Charging Party Union represents Meyers' employees; that Meyers' employees have refused to handle Respondent's goods; and that Meyers, in his view, would refuse to service Respondent if they made a delivery to the warehouse. Respondent, before the strike, handled about 6 or 7 truckloads of goods at Meyers daily.

[18] In crediting the testimony of the above witnesses, I note particularly the detailed and complete testimony of driver-dispatcher DeSanto. DeSanto initially worked with management until the middle of the strike in May 1979. His close observations of management's coercive conduct are trustworthy and reliable.

[19] I also do not credit the testimony of Robert and William Shine or the testimony of Paul Courchene, as quoted above in sec. H. In particular, I find the testimony of Bennetta (see sec. F above) to be more reliable and trustworthy concerning the damage done to his vehicle by Robert Pacelli than the assertions of Robert Shine. I also do not credit Robert Shine's attempt to contradict Stroomer's testimony concerning a conversation with William Pacelli on December 20; William and Robert Shine's attempt to contradict Zamfino's testimony concerning the events attending his discharge; and Paul Courchene's attempt to substantiate in part Respondent's denials of certain coercive conduct at the December 19 meeting or its later involvement in circulating the antiunion disavowal petition. Robert and William Shine and Paul Courchene did not, on this record, impress me as reliable and truthworthy witnesses.

I would, however, credit both Bernard Bodin and Michael Brooks concerning their prestrike and poststrike business relationships with Respondent, as recited above.

II. DISCUSSION

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of" the rights guaranteed them in Section 7 of the Act. The latter section provides that employees "shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all such activities . . . ." The credited testimony, summarized *supra*, establishes that the Employer, in response to the Union's organizational drive, embarked upon an extensive antiunion effort calculated to deprive the employees of "the complete and unhampered freedom of choice" guaranteed them in Section 7 of the Act. *N.L.R.B.* v. *Link-Belt Co.*, 311 U.S. 584, 588 (1941).

A. *Coercive Interrogations; Threats; Promises of Benefit*

The employees initiated their search for union representation during late 1978. Management immediately responded with threats and coercive interrogations. Thus, employee Canganelly credibly recalled how Company Representative Patrick Pacelli confronted him at work with the rumor that the Marron brothers "were going to pass out Union cards" at the employees' Christmas party. Canganelly claimed that he knew nothing "about anybody passing out Union cards . . . ." Patrick Pacelli threatened Canganelly that if "in fact [the employees] did sign Union cards, they would reduce the force in the shop . . . . Pace would never become Union . . . . He'd die at the fence first . . . ." Following the employees' Christmas party, Patrick Pacelli again quizzed Canganelly at work, "if" the employee "in fact had signed a card . . . ." Canganelly acknowledged to Patrick Pacelli that he had joined the Union. Shortly thereafter, Patrick Pacelli approached Canganelly at work and threatened that "if [the employees] continued on the course we were going . . . he would cut the routes down, eliminate the Massachusetts run . . . and all the [refrigerated service] work . . . ."

Employees William and Gerald Marron organized the employees' Christmas party which was held on December 16, 1978. At this party, workers were solicited to sign union membership cards. Gerald Marron credibly recalled how Company Representative Patrick Pacelli confronted him during early December with the "rumor going on that Union cards were going to be passed out at the Christmas Party." Gerald Marron denied any knowledge of the "rumor." As discussed below, both Gerald and William Marron were later discriminatorily discharged by Respondent. And, when Gerald Marron telephoned Company Representative William Pacelli in an attempt "to try to get [his] job back," William Pacelli responded, "What's done is done," and then "hung up."

In like vein, as employee Stroomer credibly testified, William Pacelli confronted Stroomer at work and "asked how the Christmas party was . . ." and "if anybody signed a Union authorization card." Stroomer admitted that he had signed a card. William Pacelli warned that "they would never have a Union in this place"—"he would close the doors and lay everybody off before a Union got in there . . . ."

I find and conclude that Company Representatives Patrick and William Pacelli, by the foregoing conduct, violated Section 8(a)(1) of the Act. The Pacellis' repeated unwarranted attempts to discover which employees were involved in the union campaign and to pry into protected union activities, coupled with management's stated opposition to unionization and threats of reprisal and retaliation, constitute the kind of coercive interrogation proscribed by Section 8(a)(1). See *N.L.R.B.* v. *Gladding Keystone Corporation*, 435 F.2d 129, 132–133 (2d Cir. 1970); and *N.L.R.B.* v. *Novelty Products Co.*, 424 F.2d 748, 751 (2d Cir. 1970). Moreover, management's warnings to these interrogated employees that the Employer "would never become Union," "would reduce the force," "would cut the routes," "elminate" work, "would close the doors," and "lay everybody off" are unlawful threats in violation of Section 8(a)(1). These statements by top management were not "carefully phrased on the basis of objective fact to convey an Employer's belief as to demonstrably probable consequences beyond his control . . . ." See *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 616–620 (1969).

The credited evidence of record also shows that upper management, on the evening of December 19, 1978, made promises of benefit to its assembled employees, "with the express purpose of impinging upon their freedom of choice for or against unionization, and . . . reasonably calculated to have that effect," in violation of Section 8(a)(1) of the Act. See *N.L.R.B.* v. *Exchange Parts Company*, 375 U.S. 405, 408–410 (1964); *N.L.R.B.* v. *Orleans Mfg. Co., Inc.*, 412 F.2d 94, 96–97 (2d Cir. 1969). Thus, as dispatcher-driver DeSanto credibly recalled, Company Representative Patrick Pacelli made clear to the assembled employees at the December 19 meeting that Respondent "will remain a non-Union Company as long as we own it"—"he'd die at the fence first."[20] William Pacelli warned the assembled employees about "trimming down the operation, parking the straight-jobs, cancellation of the meat operation . . . . and the rest of the guys wouldn't work." Representatives of management then "brought out" driver "overage, shortage and damage" records. The assembled drivers were admonished: "[W]e tolerate these records . . . if you worked for a Union . . . you wouldn't be working there . . . ."

Further, as employee Zamfino credibly recalled, Patrick Pacelli threatened the drivers on December 19: ". . . this is not a Union shop . . . if you want a Union shop go work someplace else . . . ." Employee Elcyzk credibly recalled how, at this meeting, Patrick Pacelli solicited employee complaints—"he wanted to know better ways we could straighten out the place without a Union and work things out . . . ." Elcyzk was assured by William Pacelli that his complaints "would be straightened

[20] DeSanto credibly recalled how Patrick had instructed him "to tell the drivers that [management] could give them higher wages, better vacations [and] better medical plans . . . ."

out." Elcyzk also witnessed Patrick Pacelli make clear to the employees:

> We want to try to work it out without a Union . . . we would get profit sharing . . . . better equipment, more money, better insurance with dental . . . and stuff like that.
>
> * * * * *
>
> If the Union did come in . . . he would close the doors . . . . he was going to get rid of the [straight-job] drivers.[21]

In sum, upper management, at this December 19 meeting, resorted to unlawful promises of benefit and threats of reprisal and retaliation in a further attempt to stop the Union's organizational campaign. Management's threats and promises, on this record, are not privileged "free speech" under Section 8(c) of the Act. See *Irving Air Chute Company, Inc.* v. *N.L.R.B.*, 350 F.2d 176, 180-181 (2d Cir. 1965); *N.L.R.B.* v. *Gissel Packing Co., Inc., supra* at 616-620.

B. *Surveillance and Creating the Impression of Surveillance; Instigating a Disavowal Petition; Violence*

"The law is clear that an employer's surveillance of union activity can unlawfully inhibit the exercise of rights to engage in concerted activity" in violation of Section 8(a)(1). Cf. *N.L.R.B.* v. *Aero Corporation*, 581 F.2d 511 (5th Cir. 1978). An employer may also violate this statutory proscription by "creating an impression of surveillance" of employee union activity. Cf. *N.L.R.B.* v. *Redwing Carriers, Inc.*, 586 F.2d 1066 (5th Cir. 1978). The credited evidence of record here makes it plain that management violated Section 8(a)(1) when it broke into employee DiLella's automobile and removed an envelope containing blank union cards and, in addition, when it later disclosed to its employees that it was aware of their protected union activities.

Thus, as driver-dispatcher DeSanto credibly testified, Company Representative William Pacelli broke into employee DiLella's automobile while it was parked in the Employer's lot shortly after the employees' Christmas party; removed an envelope containing blank union authorization cards; and then showed the envelope to his brother, Patrick Pacelli.[22] Further, DeSanto credibly recalled how, later that same week, he saw a copy of the envelope removed from the DiLella car, with the writing: "Pat, this is your rat." And, employee Elcyzk credibly testified how Patrick Pacelli "called" him and DeSanto into a storage room at the terminal that same week and then showed "a photostatic copy of an envelope with Johnny DiLella's name on it" and the writing "Here's your rat." Patrick Pacelli stated that he got the envelope "from somebody in the Union."

William and Patrick Pacelli, by the foregoing conduct, had engaged in surveillance of employee protected activities and had also created the impression that they were engaging in such surveillance. And, as employee Gerald Marron credibly testified, Patrick Pacelli stated to Marron that "he had heard a rumor going on that Union cards were going to be passed out at the Ghristmas party . . . ." Likewise, as employee Canganelly credibly testified, Patrick Pacelli stated to Canganelly that "he had heard the Marrons were going to have this Christmas party and they were going to pass out Union cards . . . ." Respondent, by this conduct, further impinged upon employee Section 7 rights.

In addition, as the court restated in *N.L.R.B.* v. *Pope Maintenance Corporation*, 573 F.2d 898 (5th Cir. 1978), "It is a violation of 8(a)(1) for an employer to 'induce employees to sign any . . . form of union repudiating document, particularly where the solicitation is strengthened by express or implied threats of reprisal or promises of economic benefit.'" The credited evidence of record here establishes that Respondent violated Section 8(a)(1) by threatening and coercing employee Canganelly and thereby instigating him to prepare and circulate a petition whereby the employees disavowed their previously executed union designations.

Thus, Canganelly was coercively interrogated by Patrick Pacelli about employee union activities. He was, at the same time, threatened with the elimination of jobs and other reprisals.[23] Later, Patrick Pacelli again coercively interrogated Canganelly and again threatened him. Patrick Pacelli thereafter prepared the basic format for a petition to be prepared by Canganelly and circulated among the employees in order "to save the jobs." The petition, signed by some 18 employees, attempted "to withdraw our applications for Union admittance" because the employees assertedly were "under the influence of alcohol" at the time they signed. Canganelly and other employees acknowledged that the petition's recitals were untrue. This petition was circulated at the Employer's Christmas party and later turned over to Patrick Pacelli for mailing. Such conduct plainly tended to interfere with employee Section 7 rights.

Moreover, as the court stated in *Heavenly Valley Ski Area* v. *N.L.R.B.*, 552 F.2d 269 (9th Cir. 1977), "It is settled that employer assaults upon union agents in the presence of employees constitute a restraint and coercion of employees in the exercise of their rights under Section 7 . . . ." Dispatcher-driver DeSanto credibly testified how William Pacelli, without provocation, sprayed mace on union representatives who were attempting to handbill and solicit employee support. Indeed, later, during the 30-day strike, Robert Pacelli drove a truck over picket Maglione in the presence of striking employees. As DeSanto recalled, Robert Pacelli subsequently commented, "I really made that bastard jump when I rounded the corner, didn't I." Robert Pacelli similarly backed his truck into a picket's automobile, and then commented, "It sure was a nice car." I find and conclude that upper management intentionally engaged in the above acts of violence and property damage as part of its continuing

[21] Employee Birdsall credibly recalled how Patrick Pacelli warned: "They'd never be a Union barn, they would close the doors and start over again . . . ."

[22] As discussed below, DiLella was thereafter discriminatorily denied work and ultimately discharged.

[23] Management, as noted above, also held a meeting of the drivers where threats and promises of benefit were made.

opposition to the employees' organizational effort in violation of Section 8(a)(1).[24]

C. *The Discriminatory Discharges of Employees DiLella and Gerald and William Marron*

1. DiLella

As found *supra*, employee DiLella solicited the union membership of his coworkers at the employees' December 16 Christmas party. On the following Monday, December 18, as driver-dispatcher DeSanto credibly testified, William Pacelli broke into DiLella's automobile and removed from the automobile an envelope containing blank union cards. And, later that same week, as employee Elcyzk credibly testifiei:

> Patrick Pacelli . . . showed me a photostatic copy of an envelope with Johnny DiLella's name on it . . . and a circle and a line pointing to Johnny's name. It says, "Here's your rat . . . ." Patrick Pacelli told [Elcyzk] he got it from somebody in the Union.

In addition, as found above, management was also engaging in extensive coercive interrogations and threats.

During the prior 3-to-4 month period, DiLella worked "every day" for the Employer. Following December 18, he worked some 3 days in December, some 13 days in January, and no days in February. DeSanto credibly explained that there was in fact work available for DiLella during this period; however, upper management instructed DeSanto not to give this work to DiLella. Ultimately, on February 9, DiLella was laid off.

Robert Pacelli asserted that DiLella's "hours were cut back" commencing during late December "because we didn't have a great volume of freight coming in at that time." I do not credit this unsubstantiated assertion on the part of upper management. I find and conclude instead that the real reason for management's reducing DiLella's hours of work and later laying him off was his known union activities. Respondent, by this conduct, violated Section 8(a)(1) and (3) of the Act.

2. The Marron brothers

The Marron brothers, like DiLella, also played a prominent role in initiating the employees' organizational campaign. The Marron brothers were chiefly responsible for arranging the December 16 Christmas party where the employees signed union membership cards. Gerald Marron credibly recalled that, during early December, Patrick Pacelli questioned him at work about a "rumor going on that Union cards were going to be passed out at the Christmas party." Canganelly also credibly testified that, about Thanksgiving week, Patrick Pacelli questioned him about a rumor that "the Marrons were going to have this Christmas party and they were going to pass out Union cards at that time . . . ."

In the past, the Marron brothers were usually assigned runs in the Massachusetts area. They regarded these runs as more desirable. However, as Gerald Marron credibly recalled, following his interrogation by Patrick Pacelli, during the week preceding the Christmas party, he was assigned to the New Jersey-New York area. Likewise, as William Marron credibly recalled, on the Monday following the Christmas party, he too was assigned to the Connecticut and New Jersey-New York area. The Marron brothers decided to "book off" or take time off the week of December 18. When they returned to the terminal on December 22 to "book on" and get their paychecks for the prior week, they were instructed by William Pacelli to surrender their toll or charge plates. Gerald Marron was given his personal property which he had left in his truck. About 1 week later, during late December, Gerald Marron telephoned William Pacelli "to explain" that they were not responsible for "passing" out the cards at the December 16 Christmas party and to get their "job[s] back." William Pacelli responded: "What's done is done." He then "hung up."

The Pacellis claim that the Marron brothers "quit" on December 22. I discredit this assertion. As recited above, I find the testimony of the Pacellis to be unreliable and untrustworthy. Instead, I find on this record that management discharged the Marrons on December 22, after giving them less desirable job assignments, because management held them responsible for the union activity at the December 16 Christmas party. The elimination of the Marron brothers, like the reduction in work and firing of DiLella, was in retaliation for employee Section 7 activities in violation of Section 8(a)(1) and (3) of the Act.

3. The elimination of CB radios

The credited testimony of DeSanto and William Marron, as recited above, shows that, on or about December 18, management posted a notice banning the use by its drivers of CB equipment. DeSanto recalled that he then overheard Torrino Pacelli, father of Company Representatives Patrick, William, and Robert Pacelli, telling Patrick in the terminal dispatch room that employees "shouldn't have the CB radios in the trucks because other drivers would harass them on the road and tell them to go Union."

William Pacelli asserted that the notice forbidding the use by drivers of CB equipment was posted during the first week of December. He also asserted that the reason for this notice was that the drivers, by their conversations on their CB radios, were exposing the Employer to fines by the state police for excessive weight violations. As recited above, I do not find William Pacelli to be a reliable or trusthworthy witness. I do not credit his as-

[24] Counsel for Respondent, in his post-hearing brief, renews his motion to dismiss par. 6(a) of the amended consolidated complaint as not supported by the record. The motion is granted. The record does not establish this particular incident of alleged coercion. Counsel for Respondent, in his brief, also seeks to dismiss other allegations relying upon, *inter alia*, variances between the credible testimony and the allegations of the complaint. These variances, often concerning dates, are not material or significant. The coercive conduct found above was sufficiently pleaded and, in any event, fully litigated on this record.

Counsel for Respondent also renews his motion to dismiss the General Counsel's amended allegation that Torrino Pacelli, father of William, Robert, and Patrick Pacelli (admitted supervisors and agents of Respondent), was also a supervisor and/or agent of Respondent. It is unnecessary for me to resolve this dispute. All unfair labor practice conduct involving Torrino, as found *supra*, occurred in the presence of one or more of his sons at Respondent's terminal.

sertions that he posted the above notice before the union campaign or that the reason for the posting was excessive weight fines. Instead, I find and conclude that this rule change was summarily posted on December 18, at the inception of the Union's campaign, and that the real reason for the posting was, as discussed between Torrino and Company Representative Patrick Pacelli, to discourage union activities on the part of the drivers. Respondent, by promulgating this rule change for this antiunion reason, violated Section 8(a)(1) and (3) of the Act. Cf. *N.L.R.B.* v. *Johnson's Industrial Caterers*, 478 F.2d 1208 (6th Cir. 1973); *Capital Electric Power Association*, 171 NLRB 262, 270 (1968).

D. *The Firing of Employee Zamfino*

As found *supra*, the employees initiated their organizational drive during late 1978. A representation petition was filed on December 19, 1978. On that same day, management met with its employees and, as employee Elcyzk credibly recalled, "they wanted to know our bitch" and "better ways we could straighten out the place without a Union . . . ." The employees asked for, *inter alia*, "better equipment." Elcyzk complained to management how he had to drive a truck "without lights." Elcyzk was assured that "we [the employees] wouldn't have to go through that no more," and the employees were promised "better equipment." During the ensuing months, management, in resisting the Union's continuing campaign, engaged in widespread 8(a)(1) and (3) violations, as found above.

Employee Zamfino credibly testified that, during March 1979, he had been involved in an accident as a result of faulty brakes on his truck. Thereafter, on or about April 3, 1979, after he reported for work, Dispatcher Robert Shine assigned him an unsafe vehicle. Zamfino credibly explained: ". . . smoke filled the cab and there was no safety equipment." Zamfino declined to operate this unsafe equipment. He was then assigned another vehicle which was also unsafe. Zamfino credibly explained: "[T]he seat was too low," it could not be adjusted, and there was a 90-degree play in the steering wheel. He declined to operate this vehicle and was sent home. Later, by letter dated April 3 (see G.C. Exh. 24), Zamfino was notified by Patrick Pacelli:

> On April 2, 1979 [sic], you reported to work and were assigned a truck, you refused to take it. You then were assigned another truck, you also refused to take it. You went home in a laughing attitude, not caring about your job or the customers that will not be getting their freight.
>
> This is the last time we will tolerate your childish attitude. As far as I am concerned you quit your job and you no longer work at Pace Motor Lines, Inc.

Zamfino credibly testified that, when he subsequently telephoned the Employer and asked Dispatcher William Shine for a "starting time," he was told "you're all done."

Zamfino thereupon contacted Union Representative Rossetti and assisted in renewing the Union's organizational drive. Zamfino explained his discharge to his coworkers; he secured new union authorization cards from them; and he urged his coworkers to strike the Employer. The strike, as noted, started on April 27, 1979. Employee Canganelly credibly recalled how Zamfino, in soliciting Canganelly's signature to a second union card on or about April 7, explained how he had been fired for refusing to drive unsafe equipment, and stated "[I]t's about time we got some protection." Canganelly added: "We're having a lot of problems with unsafe vehicles. I signed the card because it was true."

I find and conclude, on this record, that Zamfino was discharged because he refused to operate vehicles which were in fact dangerous and unsafe. I reject as pretextual Respondent's assertion that Zamfino was fired because he failed "to call in" after the April 3 incident. Indeed, Respondent's letter to the employee, quoted above, makes no reference to this alleged reason.

Respondent Employer, by discharging employee Zamfino for refusing to operate dangerous and unsafe equipment, on the credible evidence of record here, interfered with employee protected concerted activities in violation of Section 8(a)(1) of the Act. Thus, in *Wheeling-Pittsburgh Steel Corporation*, 241 NLRB 1214, 1221 (1979), the Administrative Law Judge, whose findings and conclusions were adopted by the Board, stated:

> It is well established that an employee engages in protected concerted activity when he undertakes to exercise a right provided for in a collective-bargaining agreement . . . . Unquestionably, this applies to a contractual right involving safe and healthy conditions of employment . . . .

The Administrative Law Judge added (at fn. 29):

> Indeed, even in the absence of a contractual provision, an employee acting alone in protesting lack of safety precautions in a plant, may, under certain circumstances, be engaging in concerted activities guaranteed by Sec. 7 . . . with respect to a matter of "continuing concern for all within the work force." *Alleluia Cushion Co., Inc.*, 221 NLRB 999, 1000 (1975); *Pink Moody, Inc.*, 237 NLRB 39 (1978) . . . .[25]

Also see *Allen M. Campbell Company General Contractors*, 245 NLRB 1002, 1006 (1979), where the Administrative Law Judge, whose findings and conclusions were adopted by the Board, noted: "The Board has long held that even lacking union representation or a collective-bargaining agreement individual action is protected activity under the Act if the employee is complaining about a matter of common concern to other employees in the same circumstances. . . ."

In the instant case, employee complaints about unsafe equipment were a part of the ongoing organizational

[25] The court of appeals modified the Board's decision in *Wheeling-Pittsburgh* noting, *inter alia*, "Because there is ample evidence in the record to support the finding that the refusals to operate the crane were not solitary acts by individual employees, we need not reach the issue of constructive concerted activity . . . ." *Wheeling-Pittsburgh Steel Corporation* v. *N.L.R.B.*, 618 F.2d 1009 (3d Cir. 1980), and cases cited. Cf. *ARO, Inc.* v. *N.L.R.B.*, 596 F.2d 713 (6th Cir. 1979).

campaign. Zamfino himself previously had experienced an accident as a result of unsafe equipment. His coworkers shared his concern in this respect. Under the circumstances, Zamfino's refusals to operate the dangerous and unsafe trucks on or about April 3 were not solitary acts by an individual employee. His complaints were of continuing concern to his coworkers and his complaints would inure to the improvement of their working conditions. Indeed, Zamfino, after being fired because he refused to operate this dangerous and unsafe equipment, related his complaints and discharge to his coworkers, renewed the ongoing organizational effort, and exhorted with success his coworkers to strike the Employer. In sum, Zamfino was discharged because he was engaging in protected concerted activities. Further, I perceive no reason here why Zamfino—having attempted to get management to fulfill its oral promises of better and safer equipment made earlier in an effort to discourage employees from getting union representation—should be any less protected than an employee whose safety complaint is embodied in a union contract.

E. *The Strike*

The employees commenced a strike against Respondent on or about April 27, 1979. The General Counsel argues that Respondent "fired" the strikers on April 27 when Patrick Pacelli told employee Al Smith on the telephone:

> If you [Smith] come in and a number of other guys come in, we can break this thing . . . . He [Pacelli] said, I also want you to know that if all these guys don't come in, they're fired . . . .

Smith joined the strike and related Pacelli's telephone conversation to various costrikers.

I have credited Smith's testimony as quoted above and I find and conclude that Pacelli's warning to the employee constitutes an unlawful "threat designed merely to dissuade the employees from persisting in their course of conduct . . . ." Cf. *Crookston Times*, 125 NLRB 304 (1959) (". . . you men must realize that if you leave your jobs in this manner you can no longer be in the employ of this Company"). However, I do not find and conclude that Pacelli's statement constitutes a firing. I note, in this respect, that management, by letters dated May 2 and May 11 (Resp. Exhs. 1 and 2), "ask[ed] all employees to continue working and/or return to work."

The General Counsel further contends that Respondent "fired" the strikers during the second week of May "by voluntarily curtailing the business operations of Respondent." I have credited the testimony of driver-dispatcher DeSanto that Patrick Pacelli instructed him some 10 days into the month-long strike "to tell the customers we're giving up our Massachusetts and Rhode Island operation, and we're not handling refrigerated merchandise any more . . . ." And, as discussed below, I find and conclude that, when the month-long strike ended, Respondent did not make a good-faith effort to recoup its prestrike business in order to delay or block the return of striking employees and thus further discourage their union activities. However, although the issue is not free from doubt, this record does not sufficiently show that Respondent in fact discharged any of the strikers during the strike. Again, I note that Respondent, by letters dated May 2 and May 11, "ask[ed] all employees to continue working and/or return to work." I cannot reasonably find here that Respondent, had striking employees attempted to return before the strike's end, would not have accepted their applications. This uncertainty becomes even more apparent when assessed in the context of an Employer whose operations were being disrupted to some extent by a strike and who was attempting at least in part to continue the operations. In sum, the General Counsel has not proven that Respondent fired the strikers during the strike or, alternatively, reasonably led the strikers to believe that they were fired.

The question remains as to the nature of the strike which commenced on or about April 27 and ended on or about May 24, 1979. Under settled principles, where an employer's unfair labor practice conduct constitutes "one of the causes of [a] strike . . . the strike is an unfair labor practice strike and the strikers [are] protected against replacement during the period of the strike . . . ." *N.L.R.B.* v. *Milco, Inc.*, 388 F.2d 133, 139 (2d Cir. 1968). In *N.L.R.B.* v. *Southland Cork Company*, 342 F.2d 702, 707–708 (4th Cir. 1965), the Board found that the employer's unfair labor practices were "a principal cause of the strike . . . ." The court stated:

> Agreement of the parties that the touring episode "triggered" the strike still fails to provide the answer as to the cause and nature of the strike. The triggering event did not displace all that had gone before, as the company argues and the Examiner seemed to think. On the other hand, it would not necessarily constitute an independent threat violative of Section 8(a)(1), as the Board held. In the view we take of the case we find it unnecessary to characterize with precision the touring of applicants through the plant. It is sufficient to say that the Board was well warranted in holding that the underlying cause, as distinguished from the immediate cause of the strike, was the intransigence of the employer and its dilatory tactics in respect to bargaining sessions. The aphorism concerning "the straw that broke the camel's back" expresses less than the truth if it is understood to attribute to the final straw sole responsibility while exonerating the much heavier burden imposed by the many straws that preceded it. Even if the parading through the plant was the exasperating "last straw," it did not outweigh the persistent accumulation of earlier violations, and it would be an unjustifiable perversion of the record to conclude that they had no bearing on the union's decision to strike.

The court concluded that "the strike was the fruit of full grown seeds earlier sown" by the employer, and that:

> . . . [b]ecause this was an unfair labor practice strike, the strikers were entitled to immediate reinstatement to their jobs, and Southland's delay in re-

instating them was violative of [S]ection 8(a)(3) and (1) of the Act. *Mastro Plastics Corp.* v. *N.L.R.B.*, 350 U.S. 270, 278, 76 S.Ct. 349, 100 L.Ed. 309 (1956).[26]

The credited evidence of record here shows that the unlawful discharge of Zamfino was the immediate cause or triggering event of the strike. Thus, Zamfino, following his firing, renewed the Union's organizational drive, signed up his coworkers, explained his complaints pertaining to safer and better working conditions, and urged his coworkers to strike. As employee Streit credibly testified, Zamfino stated to him, while soliciting him to sign a union card on April 7, "that [Zamfino] was going to organize the Union so that he could get his job back." Streit joined the strike which commenced some 3 weeks later. Further, as Canganelly credibly recalled, Zamfino wanted Canganelly "to sign another Union card because he [Zamfino] just had some problems, and he had been fired from Pace. He didn't want to drive some pieces of equipment that he deemed unsafe . . . . He said . . . it's about time we got some protection, institute some safety methods . . . ." Zamfino thereafter arranged for the drivers to meet and commence their strike on the morning of April 27.

I find and conclude that the unlawful firing of Zamfino was a cause of the strike and the strike was therefore an unfair labor practice strike. However, Zamfino's firing cannot be viewed in a vacuum. While perhaps Zamfino's firing was the"last straw," it "did not outweigh the persistent accumulation of earlier violations," and "it would be an unjustifiable perversion of the record to conclude that they had no bearing on the Union's decision to strike." This strike was also "fruit of the full grown seeds earlier sown" by the Employer. *Southland Cork, supra.* In sum, I find and conclude here that management's earlier threats, coercive interrogations, promises of benefit, discriminatory discharges, macing of the Union's business agent, and related unlawful conduct were also causes of this strike.[27]

As found *supra*, on or about May 24, 1979, at the strike's end, 10 striking employees made unconditional applications to return to work.[28] Management rejected their applications. A few days later, DeSanto similarly applied for reinstatement and, as he credibly testified, management did not offer him reinstatement. Counsel for Respondent, in attempting to justify the rejection of employee applications to return to work at the strike's end, argues "that its involuntary curtailment of business was due to business necessity and not for the purpose of chilling unionism." I reject this contention as not supported by the credible evidence of record and, instead, find and conclude here that Respondent, at the strike's end, voluntarily curtailed its business operations and did not in good faith attempt to recoup its prestrike customers in order to further discourage or block employee union activities.

Thus, Patrick Pacelli asserted that "our straight-job units were vandalized" during the strike; "it would cost in excess of $100,000 or whatever to have these vehicles fixed"; and "we didn't feel that we could . . . make it. . . ." However, no documentary evidence (such as, for example, police reports or insurance estimates) was adduced to support this claim of widespread vandalism. Indeed, by letter dated May 11, Patrick Pacelli wrote the strikers: "We have work available for you and ask all employees on strike to return to work." William Pacelli, along the same lines, asserted later before the state unemployment agency that there was in fact work available for the strikers at the strike's end. In addition, I note the credible testimony of DeSanto that the Pacellis had instructed him during the strike "to tell the customers we're giving up our Massachusetts and Rhode Island operation, and we're not handling refrigerated merchandise any more. . . ."[29] Further, salesman Boden of Midtown Packing credibly recalled that the Pacellis never contacted him after the strike to recover its prestrike business. And, William Pacelli, when asked to identify from a list of some 100 customers, "what individual called you or what individual you called . . . who told you they would not use your trucking any more" became vague and evasive claiming: "I couldn't give that. I can't remember all that information."

In sum, on this record, Respondent's claim that striking employees "were not offered reinstatement for legitimate and substantial business reasons" is not supported by the credible evidence of record and is without merit. Management had threatened its employees earlier that it would reduce its operations in this manner if they persisted in their union activities and, at the strike's end, management was making clear to the strikers that it meant what it had said. Respondent, by thus rejecting the applications of the above 11 striking employees, violated Section 8(a)(1) and (3) of the Act.[30]

Respondent further claims, *inter alia*, that it subsequently made valid offers of reinstatement to employees Canganelly, Knapp, Rynich, Verdi, and Streit. However, as the credible evidence of record summarized in section

[26] Moreover, even where a strike has been held not to be an unfair labor practice strike at its inception, an employer's unlawful actions which prolong the strike may convert the strike into an unfair labor practice strike. See *N.L.R.B.* v. *Plastilite Corporation*, 375 F.2d 243, 248 (8th Cir. 1967).

[27] Alternatively, management, during this strike, threatened employee Smith with discharge if employees "didn't come in" and later ran over a picket on the picket line during the strike and caused property damage to another picket's automobile. Such coercive conduct clearly prolonged the strike and would therefore convert it into an unfair labor practice strike.

[28] Canganelly, A. Smith, Knapp, Majowski, Streit, Fulton, Verdi, Tyler, Rynich, and P. Birdsall.

[29] This would account for the loss of approximately 15 unit jobs.

[30] The General Counsel, in his brief, lists the above 11 striking employees as unlawfully denied reinstatement during late May and early June. The General Counsel further states that "the record does not make clear whether [strikers] Glinsky and Harvey sought reinstatement" and argues that, in any event, "such attempts would have no doubt been futile under the circumstances," citing *B. N. Beard Company*, 248 NLRB 198 (1980). I agree. The credible proof here amply shows that, even if Glinsky and Harvey had requested such reinstatement at the strike's end, they too would have been denied reinstatement as a consequence of Respondent's bad-faith curtailment of operations.

In addition, although the cited Federal regulations prohibited Majowski from driving until he reached 21 years of age, the credible evidence of record shows here that management, in the past, was fully aware of Majowski's age and belatedly asserted this disability in an attempt to justify its refusal to offer reinstatement to this unfair labor practice striker. I note that Majowski became 21 years of age in November 1979. Cf. *N.L.R.B.* v. *Sure-Tan, Inc.*, 583 F.2d 355, 359 (7th Cir. 1978).

G shows, management did not in fact make valid or good-faith offers of reinstatement to these unfair labor practice strikers. Thus, management's alleged offers of reinstatement to Canganelly and Knapp were with reference to possible "night work" and not to "day work" previously performed by the employees. Cf. *Trinity Valley Iron and Steel Company*, 158 NLRB 890, 895–896 (1966); *Trailmobile Division, Pullman Incorporated*, 168 NLRB 230 (1967). Likewise, management's alleged offer of reinstatement to Rynich was for possible part-time work. Rynich had been working full time before the strike. And, management clearly did not afford Verdi sufficient or reasonable time to reply to its alleged offer. Moreover, on this record, I do not find that management made a sufficient good-faith effort to communicate an alleged offer of reinstatement to Streit, as alleged. Cf. *J. H. Rutter Rex Management Company, Inc.*, 158 NLRB 1414, 1524 (1965).

In sum, I find and conclude here that Respondent violated Section 8(a)(1) and (3) of the Act by coercive interrogations, threats, promises of benefits, the inducement of a disavowal petition, the reduction in the hours of and discharge of employee DiLella, surveillance and the impression of surveillance, personal injury and property damages, the discharge of employees Gerald and William Marron after giving them less desirable work, the discharge of employee Zamfino, the causing of an unfair labor practice strike, and the failure to reinstate unfair labor practice strikers upon their unconditional applications to return to work.

III. THE REPRESENTATION PROCEEDINGS

A. *The Union's Challenges*

The Union initially challenged six voters as supervisors;[31] two voters as salesmen excluded from the unit;[32] and three voters as not employees.[33] The Union challenged 15 other voters as possibly ineligible to vote.[34] Thereafter, at the hearing, the Union withdrew 13 of its challenges,[35] and it was stipulated that the challenge of Harrison should be sustained. Counsel for Respondent further agrees that the challenges of Kernecky and Derr should be sustained. The pertinent evidence adduced in support of the Union's remaining challenges, and discussion, is stated below:

The Union argues that W. Shine, R. Phillips, R. Bernard, D. Newton, and J. Smith are supervisors. A supervisor is defined in Section 2(11) of the Act as:

> . . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Actual existence of true supervisory power is to be distinguished from abstract, theoretical, or rule-book authority. It is well settled that a rank-and-file employee cannot be transformed into a supervisor merely by investing him or her with a "title and theoretical power to perform one or more of the enumerated functions." *N.L.R.B.* v. *Southern Bleachery & Print Works*, 257 F.2d 235, 239 (4th Cir. 1958), cert. denied 359 U.S. 911. What is relevant is the actual authority possessed and not the conclusory assertions of a company's officials. And while the enumerated powers listed in Section 2(11) of the Act are to be read in the disjunctive, the section also "states the requirement of independence of judgment in the conjunctive with what goes before." *Poultry Enterprises, Inc.* v. *N.L.R.B.*, 216 F.2d 798, 802 (5th Cir. 1954). Thus, the individual must consistently display true independent judgment in performing one of the functions in Section 2(11) of the Act. The exercise of some supervisory tasks in a merely "routine," "clerical," "perfunctory," or "sporadic" manner does not elevate a rank-and-file employee into the supervisory ranks. *N.L.R.B.* v. *Security Guard Service, Inc.*, 384 F.29 143, 146–149 (5th Cir. 1967). Nor will the existence of independent judgment alone suffice; for "the decisive question is whether [the individual involved has] been found to possess authority to use [his or her] independent judgment with respect to the exercise by [him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act." *N.L.R.B.* v. *Brown & Sharpe Mfg. Co.*, 169 F.2d 331, 334 (1st Cir. 1948).

DeSanto credibly testified that W. Shine was a pier dispatcher who also drove a vehicle about two percent of his workday. Shine's duties included calling customers at piers to determine if ships had been unloaded; distributing tickets to drivers to pick up goods at piers; and working at his desk in the dispatch office. Upper management also had their desks in this office. Shine would on occasion reassign work. He did dock work about 10 to 15 minutes a day. And, DeSanto acknowledged that Shine "did the same work for the pier workers that [DeSanto] did for the regular drivers." Neither the Union, nor the Employer, nor the Board claim that DeSanto is a supervisor, although the Union generally asserts that DeSanto did "substantially more driving than Shine."[36]

DeSanto credibly recalled that R. Phillips:

> . . . would come off the platform to the dispatch, and he would pick up all the breakdown sheets for what was on each and every trailer that came in that night. He would take these sheets out onto the

[31] R. Phillips, R. Bernard, D. Newton, J. Smith, W. Shine, and R. Trotta (Trotto).

[32] J. Kernecky and S. Derr (Denn).

[33] A. DeJulio, B. Campofiore, and P. Murolo.

[34] D. Churchill, F. Ouellette, D. Bittner, E. Dains (Davis), J. Sobkowitch, C. Shattuck, J. Kenny, E. Harrison, E. Bernard, A. Guarino, V. Stillwell, S. Zdanowicz, W. Harray, R. Pettit, and Rogers.

[35] Trotta (Trotto), Churchill, Ouellette, Bittner, Sobkowich, Shattuck, Kenny, Bernard, Guarino, Stillwell, Harray, Pettit, and Rogers.

[36] Employee Elcyzk testified that he witnessed William Shine tell employee Torres that he was "fired" in 1978 and Torres did not return to work until 3 or 4 months later. The record is not entirely clear as to the nature of this alleged firing incident and, in addition, the testimony of W. and R. Shine indicates that W. Shine may not have been involved in this incident. At best, the above incident, as recalled by Elcyzk, was an isolated occurrence involving W. Shine.

> platform . . . make sure that those trucks that had to be unloaded were unloaded, and the ones that had to be loaded were loaded. He told people to work on which truck.

The employees to whom he gave such instructions were "dock workers." Phillips had a "make-shift office on the platform." Jack Smith also used this "office." And, Phillips did "physical work" 10 percent of the time. DeSanto acknowledged that Phillips would be given "breakdown sheets" with loading instructions which had been prepared by Robert Pacelli. Further, DeSanto "sometimes" prepared these or similar documents himself.

DeSanto credibly testified that R. Bernard was a "driver-dispatcher," who "would check airfreight drivers when they came in at night"; "would help with the setting up of the loads"; and "more or less kept everything together." Bernard "dispatched" only half of his workday. He drove the remaining portion of the day.

DeSanto next testified that D. Newton was "a driver" before DeSanto "left" the Employer on May 13, 1979, and, later, Newton assertedly became a "garage manager." DiLella explained that, when he returned to work after the strike, Newton "was running the garage." DiLella credibly recalled:

> When I would come in, if I had a problem, or something, I'd have to speak to [Newton]. He'd come out either himself or he'd send somebody to fix the lights.
>
> * * * * *
>
> He was in charge, he was the foreman of the shop.

In addition, DeSanto credibly testified that Jack or Joseph Smith "would run the office in the evening"; "would make sure that Bob Phillips did all his work on the dock"; he "would make sure that all the paper work in the office was put in its proper place and all the loads were written down for the next day"; and he too worked "in the dispatch office."

The Charging Party Union has failed to sufficiently prove that R. Phillips, R. Bernard, D. Newton, J. Smith, and W. Shine were supervisors ineligible to vote. Therefore, these challenges are rejected. It is true that Phillips, Bernard, Smith, and Shine performed dispatcher duties. Their duties, in this respect, were not significantly different from the duties performed by dispatcher DeSanto, who was admittedly an employee. Phillips, Bernard, Shine, and Smith have not been shown here to have consistently displayed independent judgment in performing any statutory indicia of supervisory status. At best, they were permitted by upper management to exercise some routine, clerical, and perfunctory supervisory tasks often on a sporadic basis. Likewise, this record does not sufficiently show that Newton, as a so-called garage "foreman," exercised the requisite indicia of supervisory status. *N.L.R.B.* v. *Security Guard Service, Inc., supra.*

The Union next argues that DeJulio was William Pacelli's part-time gardener and not an employee of Respondent; that Murolo "quit at the end of the strike"; that Campofiore is an office clerical not within the unit; and that Zdanowicz was not an employee.

DeSanto credibly recalled that Campofiore was "another night worker" at the office. Campofiore would "type" bills—"He spent his entire shift in the office at his desk." DeSanto also acknowledged, however, that Campofiore did some "dispatching," although "very slight." He is an excluded office clerical.

DeSanto next recalled that Murolo worked for the Company as a dockworker and, "at the time of the strike," went to "work at Sikorsky Aircraft." And, DeSanto further recalled that Zdanowicz "suffered a stroke while he was employed . . . ." DeSanto was notified that Zdanowicz "had a slight stroke, he wasn't going to be able to work for awhile." This was 3 or 4 weeks before the strike.

Elcyzk further testified that he observed DeJulio during June 1979 employed as "a special police officer" at the local railroad or bus stations and also "cutting the grass" on one occasion at Patrick Pacelli's home.

In my view, the Union has failed to sustain its challenges of DeJulio, Zdanowicz, and Murolo. These challenges are also dismissed.[37]

B. *The Board's Challenges*

The Board agent challenged, *inter alia*, Toppe, Torres, Stroomer, and G. Birdsall. As recited in section I, *supra*, they had been discharged by the Employer for strike misconduct. They are not alleged here by the General Counsel to be employees or discriminatees. These challenges are therefore sustained.

C. *The Company's Challenges*

Counsel for Respondent argues in his brief that the challenges of six employees[38] "should be sustained in view of the fact that each of these employees had accepted permanent employment elsewhere and thereby had abandoned his interest in his former job with Respondent . . . ." Except with respect to Yarmosh,[39] this contention is rejected as contrary to the credible evidence of record summarized above. These unfair labor practice strikers were unlawfully denied reinstatement prior to the election. They did not reject valid, good-faith offers of reinstatement.

Counsel for Respondent next argues that, "as to Anthony DeSanto's ballot, Respondent's challenge should be sustained in view of the evidence that he voluntarily left Respondent's employ during the strike . . . ." This contention is contrary to the credible evidence of record. DeSanto, an unfair labor practice striker, was unlawfully denied reinstatement before the election. In addition, counsel for Respondent asserts that Elcyzk and Semion "both resigned" before the election. As noted, the General Counsel acknowledges this evidence. Accordingly, these challenges are sustained.

Counsel for Respondent asserts:

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[37] I would also dismiss the challenge to Dain (Davis) as not supported by sufficient evidence on this record.

[38] P. Birdsall, Verdi, Canganelly, Knapp, Rynich, and Yarmosh.

[39] The General Counsel acknowleges that Elcyzk, Semion, and Yarmosh "quit before the election."

> As for Harvey he resigned on the day prior to the commencement of the strike. . . . .

I do not credit this assertion. Harvey was observed on the picket line during the strike and, as found *supra*, he would not have been offered reinstatement even if he had applied.

Next, counsel for Respondent argues that Tyler was "discharged for cause prior [to] the election." I reject this assertion. Tyler, as found *supra*, was an unfair labor practice striker unlawfully denied reinstatement. He too was not offered reinstatement. Respondent's assertion that Tyler "forfeited his right to vote in the election" because he assertedly used his company toll plate without authority on May 13 to pay one toll on the Connecticut Turnpike is rejected. Assuming that Tyler engaged in this cited act of misconduct, I do not believe that Respondent fired him for this reason; this assigned reason is plainly an afterthought asserted in an attempt to deny the employee reinstatement; and, in any event, in the context of management's pervasive unfair labor practice conduct, this cited act is not sufficient to deny the employee of his right to reinstatement under Section 7.[40]

Finally, counsel for Respondent argues that Fulton and Smith "had no expectation of recall at the time of the election." This assertion is rejected. These unfair labor practice strikers, as found, were unlawfully denied reinstatement and were not later offered reinstatement.[41]

In sum, I sustain the challenges of voters Harrison, Kernecky, Derr, Toppe, Torres, Stroomer, G. Birdsall, Yarmosh, Campofiore, Elcyzk, and Semion. All others have not been sufficiently established by credible proofs on this record.

D. *The Objections*

The Union filed timely objections to Respondent's preelection misconduct. Its sixth objection includes the unfair labor practice conduct of Respondent from December 19, 1978 (when the petition was filed), to August 16, 1979 (the date of the election). As detailed above, management engaged in extensive and flagrant coercive conduct during this preelection period. In the event the Union (after the ballots are counted as recommended here) does not obtain sufficient votes for a certification, it is because of Respondent's flagrant and extensive acts of misconduct which have interfered with the holding of a fair and free election. Therefore, in the event the Union is not certified after the ballots are counted, the August 16 election will be set aside and a new election will be directed.[42]

[40] Also without merit is Respondent's challenge against Majowski. He was, as found *supra*, an unfair labor practice striker unlawfully denied reinstatement. He too was not offered reinstatement. His age disability, on this record, does not deprive him of his employee status and Sec. 7 rights.

[41] Also without merit are Respondent's challenges to the votes of the Marron brothers. They were, as found, discriminatorily discharged before the strike.

[42] It is unnecessary for me, under these circumstances, to deal with the Union's remaining objections.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce as alleged.

2. The Charging Party is a labor organization as alleged.

3. Respondent, as found *supra*, violated Section 8(a)(1) and (3) of the Act by coercively interrogating and threatening employees with respect to their union activities; offering and promising employees wage increases and other improvements in terms and conditions of employment; instigating and soliciting employees to sign a petition to revoke their designations of the Union as their bargaining agent; engaging in surveillance and creating the impression of engaging in surveillance of union activities; inflicting bodily injury and property damage upon union representatives; discriminatorily transferring to less desirable work and later discharging employees Gerald and William Marron; discriminatorily providing employee DiLella with reduced hours of work and later discharging him; discharging employee Zamfino because he had engaged in protected concerted activity; discriminatorily requiring employees to remove CB equipment from their vehicles; and discriminatorily failing and refusing to reinstate unfair labor practice strikers upon their unconditional applications to return to work.[43]

4. Respondent's employees engaged in a strike from on or about April 27 to May 24, 1979, which was caused and/or prolonged by Respondent's unfair labor practices and was therefore an unfair labor practice strike.

5. Those allegations of the consolidated complaint not specifically found herein are dismissed as not proven by the preponderance of the evidence.

6. The unfair labor practices found herein affect commerce as alleged.

7. The challenges to the ballots cast by Harrison, Kernecky, Derr, Toppe, Torres, Stroomer, G. Birdsall, Yarmosh, Elcyzk, Campofiore, and Semion are sustained. All others are dismissed as not sufficiently proven here.

8. Objection 6 to the August 16, 1979, election, as recited above, is sustained. Respondent thereby prevented and interfered with the holding of a fair and free election.

REMEDY

Having found that Respondent engaged in certain unfair labor practices, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. And, as the unfair labor practices committed by Respondent are flagrant and widespread, I recommend that Respondent cease and desist from in any other manner infringing upon rights guaranteed employees in Section 7 of the Act.

It has been found that Respondent, in violation of Section 8(a)(1) and (3) of the Act, transferred Gerald and

[43] As stated *supra*, the following strikers, found to be unfair labor practice strikers, made unconditional applications to return to work and were unlawfully denied reinstatement: Canganelly, Knapp, Majowski, Streit, Smith, Verdi, Tyler, Rynich, P. Birdsall, Fulton, and DeSanto. And, as found *supra*, had strikers Glinsky and Harvey also sought such reinstatement, their applications, on this record, would have been rejected.

William Marron to less desirable work and later discharged them; provided employee DiLella with less hours of work and later discharged him; discharged employee Zamfino; and required employees to remove from their vehicles all CB equipment. It will therefore be recommended that Respondent offer to the above employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for all losses suffered by reason of Respondent's discriminatory and unlawful conduct, by making payment to them of a sum of money equal to that which they normally would have earned from the date of Respondent's discriminatory and unlawful conduct to the date of Resnondent's offer of reinstatement, less net earnings during such period, with backpay and interest thereon to be computed as provided in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[44] It will also be recommended that Respondent rescind and revoke its rule requiring drivers to remove from their vehicles all CB equipment.

It has also been found that Respondent, in violation of Section 8(a)(1) and (3) of the Act, unlawfully denied unconditional applications for reinstatement from employees who were unfair labor practice strikers.[45] It will therefore be recommended that Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any losses sustained by reason of Respondent's unlawful and discriminatory conduct, with interest, as provided above.

It will further be recommended that Respondent preserve and make available to the Board, or its agents, upon request, all payroll records and reports and all other records necessary and useful to determine the amount of backpay due and rights of reinstatement under the terms of this Decision and Order. In addition, Respondent will be directed to post the attached notice.

ORDER[46]

The Respondent, Pace Motor Lines, Inc., Stratford, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees about their union activities.

(b) Threatening employees with loss of employment and other reprisals if they engage in union activities.

(c) Promising employees wage increases and other improvements in their terms and conditions of employment in order to discourage their union activities.

(d) Instigating and soliciting employees to sign a petition to revoke their designations of Local Union No. 191, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, as their bargaining agent.

(e) Engaging in surveillance of or creating the impression of engaging in surveillance of employee union activities.

(f) Inflicting property damage and personal injury upon union representatives.

(g) Discharging employees because they have engaged in protected activities for the purpose of mutual aid and protection, and discouraging membership in said Union, or any other labor organization, by discriminatorily reducing the hours of work of employees; discriminatorily assigning employees less desirable work; discriminatorily discharging employees; and discriminatorily requiring them to remove CB equipment from their vehicles.

(h) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act:

(a) Offer employees Gerald and William Marron, John DiLella, and Frank Zamfino immediate and full reinstatement to their former jobs or to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any losses sustained as a result of its discriminatory and unlawful action in the manner set forth in this Decision.

(b) Offer the following employees immediate and full reinstatement to their former jobs or to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any losses sustained as a result of its discriminatory and unlawful action, in the manner set forth in this Decision: Canganelly, Knapp, Majowski, Fulton, Verdi, Streit, Tyler, Rynich, P. Birdsall, A. Smith, DeSanto, Harvey, and Glinsky.

(c) Rescind and revoke its discriminatorily promulgated rule requiring employees to remove all CB equipment from their vehicles.

(d) Preserve and, upon request, make available to the Board or its agents all payroll and other records, as set forth in this Decision.

(e) Post at its facilities in Stratford, Connecticut, copies of the attached notice marked "Appendix."[47] Copies of said notice, on forms provided by the Regional Director for Region 2, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, in conspicuous places, and be maintained for 60 consecutive days. Reasonable steps shall be taken to insure that notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[44] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[45] They are: Canganelly, Knapp, Majowski, Fulton, Verdi, Streit, Tyler, Rynich, P. Birdsall, A. Smith, DeSanto, Harvey, and Glinsky.

[46] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[47] In the event this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that Case 2-RC-18202 be remanded to the Regional Director for the opening of all ballots challenged except with respect to those 11 challenged ballots as sustained herein. Thereafter, the Director shall issue a revised tally of ballots to the parties and, if said tally indicates that the Petitioner Union was designated by a majority, she shall issue a certification of representative. Should such revised tally fail to disclose that the Petitioner Union has been designated by a majority, the election conducted on August 16, 1979, shall be set aside and the Director shall conduct a rerun election at such time as she deems the circumstances permit a free choice on the issue of representation.

IT IS FURTHER ORDERED that allegations in the consolidated complaint not specifically found herein be dismissed.